RECORD, CASE No 15,261.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 891.

GEORGE E. KIRK, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

GEORGE E. KIRK
v.
THE UNITED STATES. } No. 14485.

I.—*Statement of Preliminary Pleadings.*

1. On the 27th day of October, 1884, the claimant filed his original petition in this case.

2. Defendants filed their traverse to said petition November 3, 1884.

3. Defendants withdrew their traverse and filed a demurrer to said petition November 7, 1884.

4. Claimant filed an amended petition January 22, 1885.

5. Claimant filed an amended petition December 3, 1885.

6. Defendants filed a traverse of said amended petition April 13, 1886.

7. Claimant filed amendments to amended petition of December 3, 1885, April 24, 1886.

8. On January 26, 1891, claimant, by leave of court, filed his amended petition to stand in lieu of former petitions, as follows:

2 II.—*Amended Petition and Exhibits Thereto. Filed January* 26, 1891.

1. The claimant herein is the assignee of the entire interest and property of certain improvements in so-called "street letter-boxes," made by Samuel Strong, inventor of said improvements, upon inventions for which several letters patent were issued to him, as hereinafter stated; and the said Samuel Strong is the assignor of said interest and property to said claimant, by deed of assignment, dated the 26th day of January, A. D. 1881, and recorded in Liber F 26, page 226, of Transfer of Patents, in the United States Patent Office, a copy of which assignment is hereto annexed, marked Exhibit "A."

2. The said assignment transfers from said assignor to said assignee the whole and exclusive rights, titles and interests secured to said assignor by the said letters patent, as described in said deed of assignment, together with all rights of action both in equity and at law, as included therein; consequently, the said claimant is the present and legal owner of the whole and exclusive title, interest and rights of action belonging to said letters patent, as was the said patentee before said assignment was made and recorded.

3 3. The said letters patents were issued to the said Samuel Strong, assignor, and also to said assignee, by the United States, the defendant in this cause, through one of the executive departments of the same, on March 30, 1869, and numbered 88528; on August 31, 1869, numbered 94449; on February 7, 1882, numbered 253,236; and an application for letters patent was made by

said Samuel Strong on March 9, 1874; printed copies of the respective specifications of which are hereto annexed, marked respectively as Exhibits "D," "E," "F," "G," and "H."

4. On or about the 15th day of September, 1869, the said Samuel Strong, being the sole owner and proprietor of said inventions and of the letters patent then issued thereon, entered into and made a certain contract with the United States of America, by the Postmaster General thereof, for the purpose of supplying the said United States, with as many of the above-described street letter-boxes as might be required by the said Postmaster General, a certified copy of which contract being hereto annexed, marked Exhibit "B."

5. On or about the 18th day of February, 1870, the said Samuel Strong made another, further, and substitutive contract with the said United States, by the Postmaster General thereof, to furnish said street letter-boxes, for the use of the said United States, for a term of four years, from and after the execution of the contract; a certified copy of which is hereto annexed, marked Exhibit "C."

6. And the claimant further says, that the said Samuel
4 Strong carried out and completed his said contract, made on the 18th day of February, 1870, by supplying to the said Postmaster General of the United States the street letter-boxes, in accordance with the terms of said contract, until the 18th day of February, 1874; that, at the termination and expiration of said contract, the said Samuel Strong applied to the Postmaster General of the United States for a renewal of the same; and that, notwithstanding a verbal understanding and promise, on the part of the said Postmaster General, made at the time of the execution of said contract, that there would be such a renewal, said renewal was denied to said Samuel Strong, and no further renewal of said contract has since been made by and between the said parties thereto.

7. In pursuance of said contract, made on the 18th day of February, 1870, the United States paid to the said Samuel Strong the sum of $3.50 for the use of each and every box which he furnished during the existence of said contract.

8. The said claimant further says that the said Government of the United States, since the 13th day of February, 1874, has caused to be made, and has constantly and continuously used, and is now ordering, using and continuing to use the said street letter-boxes, of substantially the said letters patent, and of those of the aforesaid contracts, in all the cities, towns or places of the United States, where said street letter-boxes are used; and that all the said letter-boxes wherever used by the defendant in any portion of the United States for the deposit of letters by the public, are substantially the
5 same as those covered by the "claims" of the aforesaid application for letters patent, and included by said contracts, and now owned by the said claimant; and furthermore, the said continuous use has been in violation of the acquired and legal rights of the said claimant, in virtue of said assignment, and a great and serious damage to the said assignor and his assignee to whom has been transferred, as aforesaid, all the exclusive rights of compensation and damage for the aforesaid unlicensed uses which

may have accrued to the said Samuel Strong, and consequently have been accruing to his assignee, the aforesaid claimant.

9. Claimant further says, that the United States has, since the 18th of February, 1874, neglected and refused to renew the said contract, or to pay to the said Samuel Strong or his order, or to pay any other person for his use or benefit, or to pay to the said claimant, George E. Kirk, any sum of money for the use of the said street letter-boxes; and that therefore, the said Government of the United States in accordance with the statutes of the United States making special provision therefor, and under an implied contract, is owing said claimant and assignee, George E. Kirk, a lawful, just and proper compensation for the use of said street letter-boxes, and the improvements thereon made; and that the measure and standard of said lawful and proper compensation, which has been due, and is now due and owing to said assignee from said defendant, would be at least the sum of three dollars and fifty cents ($3.50) upon each and every one of said boxes, which was paid by the Government of the United States to said Samuel Strong, as hereinbefore stated and described.

6 10. Wherefore, for the reasons hereinabove stated and any others which may hereafter appear in connection therewith, or by amendment of said petition, the said claimant demands judgment against the said defendant for the sum of three dollars and fifty cents upon each so-called street letter-box, furnished to and used by the defendant, or any of its officers or employees, since the expiration of the said second contract above described, to wit, from and after the 18th day of February, 1874; or for any portion of said time from and after the aforesaid date of the termination of said contract; together with interest thereon, at the rate of six per centum per annum. And the said claimant further says, that the said defendant owes him such further sum or sums than is hereinbefore stated, as may hereafter be made to appear by amendment, evidence or otherwise, for damages, or as penalty, for the use of said letter-boxes, or improvements thereon, in accordance with the principles of law and the statutes in such cases made and provided. For all of which losses, damages, costs and expenses, the said claimant demands judgment against the defendant. The said defendant has, or should have, upon its records, a correct and true statement of the number of said street letter-boxes made during the periods last above named, together with their location and the length of time which they have been used by the defendant; and notice is hereby given to the defendant, to have produced as soon as may be convenient after the filing of this petition, a certified statement from the records of the said defendant, of the number of said letter-boxes thereafter used, and now in use, by the said defendant, for the use of the claimant, and as evidence in the trial of this cause.

7 11. The claimant further states, that the application for letters patent, as heretofore stated, was duly executed and filed on March 9th, 1874, in the office of the U. S. Commissioner of Patents; that said commissioner caused, in accordance with law, the examination of said application to be made by the proper officer ap-

pointed for that purpose; that said "primary examiner," acting as the duly authorized subordinate of said commissioner, finally rejected the claims of said application; that, in due course of law, appeal was made, from the said decision, and judgment of the primary examiner, to the "board of examiners-in-chief," which, after due proceedings, had reversed the decision of said "primary examiner," and rendered its decision and judgment, with a full and exhaustive expression of opinion in the premises, substantially as follows, namely: That the applicant, Samuel Strong, with his assignee, was entitled to letters patent upon said application of March 9th, 1874; that, in accordance with said judgment of said "tribunal of appeal," and also, with the second clause of section 4893, R. S. U. S., the said commissioner "allowed" the "claims" of the aforesaid application, received the "final fee" in the premises, and "ordered the patent to issue;" and finally, that, notwithstanding all said due and lawful proceedings had, and the mandatory nature of said section 4893, the said commissioner still withholds said letters patent from issue, for reasons known only to himself, and entirely contrary to the said expressed mandate of law.

8 12. The claimant further says that he is the sole owner, in his own right, of said property; that is, of all of said improved inventions, together with all the exclusive rights, title and interests therein and thereto appertaining, in virtue of the aforesaid assignment; and that he has not made any transfer or assignment of the same to any person or persons, or corporation, or any part thereof, or interest therein.

13. Claimant further says, that he is a citizen of the United States, and that he has not brought any claim herein described before the Congress of the United States, or any executive department of the Government thereof.

G. E. KIRK, *Claimant.*

DISTRICT OF COLUMBIA, } ss:
City of Washington, }

Personally appeared before me George E. Kirk, personally known to me to be the person described, who signed the foregoing statement in my presence, and made oath that the same was true, except as to any portions therein stated on information and belief, and to those he makes oath that he believes, and has cause to believe, the same to be true.

[SEAL.] SAML. MILLS,
Notary Public.

(Claimant's address is Washington, D. C.)

9 EXHIBIT "A" OF THE PETITION.

Whereas I, Samuel Strong, of the city of Washington in the District of Columbia, did obtain letters patent of the United States for certain improvements in "street letter-boxes," which letters patent date respectively March 30th, 1869, numbered 88528, and August 31st, 1869, numbered 94449; and whereas I, the said Samuel Strong,

did invent certain improvements in said "letter-boxes," for which I have prepared, executed and filed in the United States Patent Office, applications for letters patent of the United States, on September 4th, 1870, and on March 9th, 1874, respectively; and whereas George E. Kirk of the aforesaid city and District, is desirous of acquiring an interest therein, namely, in both the said letters patent, and the said inventions for which applications have been made.

Now this indenture witnesseth: That for the sum of five dollars, to me in hand paid, and for other valuable considerations the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and do hereby assign, sell and set over unto the said George E. Kirk all the right, title and interest which I have in all of said inventions, together with all royalties, or other dues heretofore uncollected, or that shall be collected hereafter in any legal manner, from any unlawful manufacturer or user of said patents as secured to me by said letters patent, and also in all improvements heretofore made by me, as set forth in the specifications prepared, executed and filed, preparatory to the obtaining of letters patent therefor: The same to be held and enjoyed by the said George E. Kirk, as fully as I might have done had this conveyance not been made.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 26th day of January, A. D. 1881.

SAMUEL STRONG.

In presence of—
R. H. STEELE.

COUNTY OF WASHINGTON, } *ss.*
District of Columbia, }

On this 26th day of January, A. D. 1881, before me, a notary public in and for said county, personally appeared the above-named Samuel Strong, who makes solemn oath that he executed the foregoing assignment for the uses and purposes therein mentioned, and that he is legally competent to make a valid conveyance of the interest therein conferred.

[SEAL.] JAMES NICHL CALLAN,
Notary Public.

10 (EXHIBIT B OF THE PETITION.)

UNITED STATES OF AMERICA:

Contract for Cast-iron Street Letter-boxes.

This article of contract, made this fifteenth day of September, in the year one thousand eight hundred and sixty-nine, between the United States of America (acting in this behalf by their Postmaster General) of the one part, and Samuel Strong by himself and his sureties, whose names are hereunto affixed, of the other part:

Witnesseth: that whereas the said Samuel Strong has contracted to furnish cast-iron street letter-boxes for the use of the Post Office Department of the United States aforesaid, in such numbers, and

at such times and places as may be ordered by the Postmaster General aforesaid, from the date hereof up to the first day of October, one thousand eight hundred and seventy-two:

Now, therefore, the said Samuel Strong and Gideon L. Walker and Robert Strong, his sureties, do jointly and severally undertake, covenant and agree with the United States aforesaid, and do bind themselves:

First. That the said Samuel Strong will make and furnish for the use of the United States such cast-iron street letter-boxes of the size, shape, weight and model of the one deposited by him in the General Post Office Department, as may be ordered by the said Postmaster General or his successors in office, at any time between the date hereof and the aforesaid first day of
11 October, one thousand eight hundred and seventy-two. Said boxes are to be furnished by said Samuel Strong according to order, in any State or Territory of the United States, and are to be put up, complete in every respect, at the point or points designated by said Postmaster General, within a reasonable time after the said orders for the same shall be given, and for repeated failures of said Samuel Strong to perform any of the stipulations of this contract, the said Postmaster General, or his successors in office, may annul said contract. The said boxes are to be constructed in the best manner, they are to be of cast iron, well painted on the outside with two coats of paint, the last of which shall be of dark green, and one coat of paint on the inside.

Each box is to measure nine inches and one-fourth of an inch one way, and eleven inches and five-eighths of an inch the other, to be twelve inches high on the front, and fourteen inches and three-quarters of an inch on the back, and each box, including the bands, nuts, and back brace that goes between the lamppost and the box, is to weigh forty-four pounds.

The said boxes are to be freighted without unnecessary delay, to the places or place where they are to be erected, at the cost of the said Samuel Strong, and are to be put up in a good, substantial, and workmanlike manner by the said Samuel Strong or his agent, at such point or points in the city for which they are intended, as the postmaster of said city or some other authorized agent of the General Post Office Department shall designate.

12 Second. And the said United States covenant and agree with the said Samuel Strong to pay him for each box furnished and put up according to order, five dollars and fifty cents. This sum to cover every expense of material, manufacture, transportation, and erection of each box, and the bands, nuts, back braces, and other necessary fixtures accompanying each box.

And the said United States further covenant and agree to pay unto the said Samuel Strong the aforesaid sum of five dollars and fifty cents for each box ordered and put up on the presentation of a certificate from the postmaster of the city where erected, showing that said box has been furnished and put up in complete order according to agreements.

If boxes, bands, nuts, braces, and fixtures shall be delivered by

the said Samuel Strong, according to order, at any town or city, and from any cause whatsoever, without default on the part of the said Samuel Strong, the postmaster of said city or other authorized agent of said United States shall delay designating the point or points where said boxes are to be erected, the said boxes shall be paid for on a certificate from said postmasters, showing that they have been delivered in said town or city in good order, less thirty-three cents per box, which sum of thirty-three cents per box shall be paid to the said Samuel Strong, when he presents to this department a further certificate from the aforesaid postmaster, showing that the work of putting up such reserved boxes has been completed in proper order, and in the manner required by this agreement.

Third. And the parties to this contract further covenant
13 and agree that if the said Samuel Strong shall at any time, make improvement in the construction or model of his box, the said United States shall have the benefit of such improvement, if approved of by this department, without additional cost, charge, or expense to the said United States.

Fourth. The said Samuel Strong and his sureties Gideon L. Walker and Robert Strong, further covenant and agree that if the box now adopted under this agreement shall in any way conflict or interfere with or infringe upon the patent granted to the owner of any other box, that the said Samuel Strong and his said sureties shall be liable therefor, and shall protect and save harmless from all responsibility the party of the second part to this contract, and if any such conflict of patents shall arise, the Postmaster General, or his successor in office, may, in his discretion, declare this contract null and void.

Fifth. It is further covenanted and agreed by and between the parties hereto that this contract shall take the place of the contract now in existence between the parties hereto for the cast-iron street letter-boxes used by this department up to the date of this contract, and the said existing contract is hereby declared to be henceforth null and void.

Sixth. And the said Samuel Strong hereby agrees, whenever required by the United States aforesaid, to substitute the lid or top of the box now adopted for the lid of the box heretofore furnished by him, and for each and every lid thus ordered and furnished and put up in complete order, the said United States shall pay to the said Samuel Strong the sum of one dollar and fifty cents; payment to be made on the certificate of a postmaster showing how many new lids have been substituted for old ones.

14 And the said Samuel Strong agrees to take from the United States aforesaid, any one or more of the old cast-iron letter-boxes now in use which the Postmaster General may wish to dispose of, at the price of one dollar per box.

And for the faithful performance of this contract the said Samuel Strong, his sureties, Gideon L. Walker and Robert Strong, bind themselves, their and each of their heirs and executors, administrators, or assigns to the aforesaid United States, in the penalty of two thousand dollars.

In witness whereof the said Postmaster General has caused the seal of the Post Office Department to be hereunto affixed, and has attested the same by his signature, and the said Samuel Strong and the said Gideon L. Walker and Robert Strong, his securities, have hereunto set their hands and seals the day and year set opposite their names, respectively.

[SEAL.] JOHN A. J. CRESSWELL, *P. M. G.*
SAMUEL STRONG.
GIDEON L. WALKER.
ROBERT STRONG.

Signed, sealed, and delivered by the Postmaster General in the presence of—
GEORGE EARLE.

And by the other parties in the presence of—
GEO. P. FISHER.

I certify that the above-named Gideon L. Walker and Robert Strong are good and sufficient sureties for the amount in the foregoing contract, and for the entire and complete performance of said contract.

GEO. P. FISHER,
Ass. S. C. P. O.

15 ("EXHIBIT C" OF THE PETITION.)

UNITED STATES OF AMERICA:

Contract for Cast-iron Street Letter-boxes.

This article of contract, made this eighteenth day of February, in the year of our Lord one thousand eight hundred and seventy, between the United States of America (acting in this behalf by the Postmaster General) of the one part, and Samuel Strong, by himself and his sureties of the other part, witnesseth,

That whereas the said Samuel Strong has agreed to furnish cast-iron street letter-boxes for the Post Office Department of the United States aforesaid in such number and at such places as the Postmaster General may direct,

Now, therefore, the said Samuel Strong and his sureties, Horatio R. Maryman and Robert Strong, do jointly and severally undertake, covenant, and agree with the United States aforesaid, and do bind themselves:

First. That the said Samuel Strong shall manufacture, furnish and erect for the use of the United States aforesaid all cast-iron street letter-boxes of the size, shape, weight and model of either the small or large box deposited by him in the Post Office Department at Washington (the former marked A and the latter B) which the Postmaster General may order.

And should said boxes, of either the large or small size, and of the model aforesaid, when in use, fail to give satisfaction, to the

Postmaster General, the said Strong shall model and manufacture other boxes, with such alterations and improvements therein as the Postmaster General may suggest, and shall continue to
16 make new models until two boxes, one of the large and one of the small size, giving entire satisfaction to the Postmaster General, shall be adopted; according to which models all subsequent boxes shall be made, the new boxes not, however, to exceed in size or weight those herein designated with the letters A and B.

This contract to continue and remain in force and binding on both parties for four years from and after the date hereof; that is to say, until the eighteenth day of February, eighteen hundred and seventy-four. It may, however, be annulled by the Postmaster General, or his successor in office, for repeated failures on the part of the said Samuel Strong to perform any of the stipulations in this agreement, or for any cause hereinafter assigned.

And the said parties of the second part further covenant and agree that the said Samuel Strong shall furnish said boxes, according to the order of the Postmaster General, in any State or Territory of the United States, and shall put them up in complete order in every respect, ready for use, at the point or points designated by the said Postmaster General, and within a reasonable time after each order is given. The said boxes are to be constructed in the best manner of cast iron; they are to be furnished with nuts, two bands and other necessary fixtures for fastening them to lamp-posts; they are to be painted on the outside with two coats of paint, the last coat to be of a dark-green color, and on the inside with one coat of paint.

The large box, with the bands, nuts, and necessary fix-
17 tures, shall weigh not less than sixty pounds, and the small box with its bands, nuts and necessary fixtures, not less than thirty pounds.

The said boxes are to be freighted from the place of manufacture to the place of, or places where they are to be put up, without delay, at the expense of the said Samuel Strong, and are to be put by him, or his agents, in good, substantial and workmanlike manner at such point or points in the city for which they are intended as the postmaster of said city, or other authorized agent of the Post Office Department, shall designate.

Second. And the said United States of America, by the Postmaster General aforesaid, hereby agree to purchase from the said Samuel Strong all the cast-iron street letter-boxes it shall require for the use of the Post Office Department during the existence of this contract, and agree to pay for each large box, with its bands, nuts and necessary fixtures, put up in complete order, seven dollars and fifty cents; and for each small box, with its bands, nuts and necessary fixtures, put up in complete order, five dollars and fifty cents. The said price is to cover every expense and cost of material, manufacture, transportation and erection with its bands nuts and fixtures.

Before payment is made in any case, the said Samuel Strong shall present to the Postmaster General a certificate from the postmaster

of the city where boxes have been put up showing that the work has been done and the boxes erected in good order.

Should one or more boxes be delivered according to order, but be not put up, by request of the postmaster of the place, or by reason of his neglect to designate the point or points in said
18 city where said boxes are to be erected, the said boxes shall be paid for, on certificate of the postmaster, showing they have been delivered, retaining thirty-three cents to defray the expense of putting up each box, and the said sum of thirty-three cents per box thus retained shall be paid to the said Samuel Strong when he presents a further certificate of the postmaster of the place showing that the work has been completed and the boxes put up in good order.

Third. And the said Samuel Strong, Horatio R. Maryman and Robert Strong further covenant and agree that if the boxes now adopted, or which may be adopted under this contract, shall in any way conflict with or infringe upon the patent granted to the owner of any other cast-iron street letter-box, that the said Samuel Strong and his sureties shall be liable therefor, and shall protect and save harmless the said party of the first part to this contract from all responsibility in the matter. And, if such conflict of patents shall arise, the Postmaster General or his successor in office, may, in his discretion, declare this contract null and void.

Fourth. The parties to this instrument of writing further covenant and agree that this contract shall take the place of the contract now in existence between the same parties relating to cast-iron street letter-boxes, and that said existing contract is hereby declared henceforth null and void.

It is further covenanted and agreed that this contract shall not be assigned by the said Samuel Strong, in whole or in part, to any person or persons whomsoever, unless the consent of the
19 Postmaster General, in writing, be first had and obtained to said assignment.

Fifth. And the said United States (by the Postmaster General aforesaid) hereby agree to sell unto the said Samuel Strong all the old cast-iron street letter-boxes now in use, and which they wish to dispose of, for one dollar per box; and for each and every old box, thus sold to the said Samuel Strong, he agrees to allow, in settlement of account, the said sum of one dollar.

And, for the faithful performance of this contract, the said Samuel Strong and his sureties, Horatio R. Merryman and Robert Strong, bind themselves, their and each of their heirs, executors, administrators, and assigns, to the aforesaid United States of America in the penalty of two thousand dollars.

In witness whereof the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature. And the said Samuel Strong, Horatio Merryman, and Robert Strong, have hereunto set their hands and seals on the day and year first hereinabove written.

[L. S.] JNO. A. J. CRESWELL,

Postmaster General.

Signed, sealed, and delivered by the Postmaster General in presence of—

JAMES H. MARR.

SAMUEL STRONG. [SEAL.]
ROBERT STRONG. [SEAL.]
HORATIO R. MERRYMAN. [SEAL.]

And by the other parties in the presence of—

——— ———.

I certify that the above-named Horatio R. Merryman and Robert Strong are good and sufficient sureties for the amount in the foregoing contract, and for the entire and complete performance of said contract.

[L. S.] R. J. MEIGS,
Clerk of the Supreme Court of the District of Columbia.

Good.

WILLIAM MORGAN, *Tax Clerk.*

20 (EXHIBIT "D" OF PETITION.)

United States Patent Office.

SAMUEL STRONG, of Washington City, District of Columbia.

Letters Patent No. 88528, dated March 30, 1869.

Improvement in Street Letter-boxes.

The schedule referred to in these letters patent and making part of the same:

To all whom it may concern:

Be it known that I, Samuel Strong, of Washington city, in the county of Washington, and District of Columbia, have invented new and useful improvement in street letter-boxes; and I do hereby declare that the following is a full, clear and exact description thereof, reference being had to the accompanying drawings in which—

Figure 1 is a side elevation in perspective of a letter-box made in pursuance of my invention, and

Figures 2 and 3 are sections in line *x x*, Fig. 1; figure 2, showing the drop-lid closed, and Fig. 2, showing it open.

The nature of my invention consists in so constructing a drop-letter box, that when a letter or package has been deposited therein, it will be impossible to extract it without unlocking or breaking the box.

In the accompanying drawings—

A is the box, in which the letters are deposited, and

B the lid, which must be opened to remove the contents of the box.

This lid is hinged to the back part of the box, and its front edge is provided with a hasp, or suitable device, for locking it to the box A.

In this lid B there is a rectangular apartment, C, which is surrounded by a vertical flange, D.

This aperture C is covered by a hinged lid, F, which has a flange, D, around its edge, projecting downwards, and fitting, when the lid F is closed, closely around the flange D, which surrounds the aperture in the lid B.

Rigidly attached to the back part of the lid F, is an inclined plate, F', of the same form as the aperture C, and of such size that it will practically close the aperture C when the lid F is raised.

21 On the upper edge of the front part of flange D is a ledge, *d*, projecting inward, which limits the extent to which the lid F may be raised by arresting the ascent of the inclined plate F'.

The flange L is of such height that as the lid F descends the inclined plate F' is all the time moving within the aperture C, and surrounded by said flange, until the flange D' of lid F begins to close down over the front part of said flange D; and as the lid F is raised, the inclined plate F' closes the recess C before the lower edge of flange D' rises above flange D, so that at no time can anything be extracted from the box through the aperture C, without breaking or removing the lid F.

The ascent of the lid F may be limited to any point desired by a stop, *b*, at the back part of it.

The lid B may be rigidly attached to the box, or cast therewith, and a door may be provided in the side or end of the box, for removing the contents.

This construction will be found most convenient for one-armed letter-carriers, as it will obviate the necessity of holding up the lid while the letters are being removed from the box.

The operation is as follows:

The lid F is raised until the front edge of the inclined plate F' comes in contact with ledge *d*, or until the ascent is arrested by the stop *b*, and the letter or package is deposited upon said inclined letter F'. The lid F is then closed down, and the front edge of the inclined plate F' falls sufficiently below the aperture B, to form an opening for the letter or package to drop into the box A, from which it cannot be removed without unlocking or breaking the box.

22 Having thus fully described my improvement, and its mode of operation,

What I claim as my invention, and desire to secure by letters patent, is—

The flange lid F with its inclined plate F', in combination with the aperture C, surrounding flange D, all constructed to operate substantially as within described.

SAMUEL STRONG.

Witnesses:

G. A. C. SMITH.

E. R. BROWN.

(EXHIBIT "E" OF PETITION.)

United States Patent Office.

Letters Patent No. 94449, dated August 31, 1869.

Improvement in Letter-boxes.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern:

Be it known that I, Samuel Strong, of the city of Washington and District of Columbia, have invented a new *a new* and useful improvement in street letter-boxes; and I do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the annexed drawings, making part of my specification.

In order to enable those skilled in the art to make and use my invention, I will proceed to describe it.

Figure 1 represents a front elevation of the closed box;

23 Figure 2 represents a front view of the same, open and ready to receive letters;

Figure 3 represents a vertical section of the box when closed; and

Figure 4, a vertical section of the box when open.

A represents the box, which is provided with a door, B, for the removal of letters or other mail matter. The top of said box is in the form of an arch or semicircle.

In Figs. 3 and 4 the box is shown in section, in which the top forms the arch of a circle, the centre of which is at the point through which the shaft C passes.

The shaft C passes through the box from front to rear. The end of the shaft at the front projects through the box, and has attached to it a weighted handle, D, and a plate, G.

The plate G is intended to cover the aperture H, through which the letters are inserted.

Attached to the shaft on the inside of the box are two blades, E and F, with serrated edges.

To the lower part of the blade F is attached a weight, K, which cooperates with the weighted handle D.

When the letters are to be inserted in the box, the handle D is brought to the position shown in Fig. 2, causing a partial revolution of the shaft C, which is arrested at the proper point by a stop, I, with which the handle comes in contact. The plate G, attached to the shaft C, is removed from the opening H, and the blades E and F are brought to position shown in Fig. 4. The letters drop into the compartment formed by the blade F and back part of the blade E.

24 When the handle is released, it falls, by its weight, to its original position against a stop, J, as shown in Fig. 1.

The plate G is brought over, and closes the opening H, and the blades E and F are brought into the position shown in Fig. 3, precipitating the letters into the lower part or body of the box.

It will be seen, that in whatever position the blades E and F may be, they effectually cut off the communication between the opening H and the lower part or body of the box, which contains the mail matter, and when closed, as shown in Fig. 1, the opening H is covered by the plate G, and thus absolute security is obtained.

The blades E and F, the handle D, and cover G, are all attached to the shaft C, so that by simply turning the handle, all the moving parts of the machine are operated directly by said shaft, without any gearing whatever to connect one moving part with another.

Having thus described my invention, what I claim, and desire to secure by letters patent, is—

The shaft C, with the blades E and F, cover G, and handle D, all attached to said shaft, in combination with the aperture H, and a weight or weights to turn the said blades and cover back to their place automatically, as described, all being constructed, arranged, and operating substantially as set forth.

SAMUEL STRONG.

Witnesses:
AMOS HUNT.
DAN'L J. MOFFAT.

25 (EXHIBIT "F" OF THE PETITION.)

United States Patent Office.

SAMUEL STRONG, of Washington, District of Columbia.

Street Letter-box.

Specifications forming part of Letters Patent No. 253,236, dated February 7, 1882. Application filed April 1, 1881. (No model.)

To all whom it may concern:

Be it known that I, Samuel Strong, a citizen of the United States, and residing at Washington, in the District of Columbia, have invented improvements in the street letter-boxes, of which the following is a specification:

My improvements particularly consist, first, in providing the box with a tilting bottom and front plate provided with cheeks, so that when lowered it will form an open box, from which the mail matter may readily be moved by hand, and combining with this tilting box a stop-ledge to limit its movement and prevent the escape of mail matter at back; second, in the combination, with a letter opening, of a rigid external hood, and internal chute, and a curved back plate, formed and arranged as hereinafter described, to provide an effectual safeguard against the abstraction of mail matters, while avoiding danger of the lodgment of long letters or packages in the upper part of the box.

26 In the accompanying drawings, forming a part of the specification, figure 1 represents an end view of the said box, and figure 2 a longitudinal section of the same.

A represents, in the drawings, the letter-box, made generally of cast iron, in the form of plate pieces, the top, sides, ends, and elbow piece being cast separately, with suitable edge creases or flanges for riveting them together.

B represents the said tilting elbow piece, the end and bottom being cast in one piece as shown, and provided with *a* trun-ions or pivots *a*, turning in suitable bearings made within the bottom edges of the two sides of the box A. The elbow piece forms the bottom and lower portion of the front end of the letter-box, and by the tilting downward of its end piece, *b*, the necessary opening is made for removal of mail matter, and the bottom piece, *c*, is made to incline or tilt, thereby projecting or sliding the mail matter toward the opening end, and increasing the facility of its removal. The said oscillation and inclination are suitably limited by the inclined ledge, *d*, (fastened inside the lower part of the rear end at the box,) against the under side of which ledge the inner end of the tilting bottom, *c*, engages, said ledge also serving to prevent letters within the box from falling or getting entangled behind the rising end of the said tilting bottom. As an additional preventative for the same entanglement, the support of the said ledge is made in a curve closely corresponding with the arc described by said rising end of bottom. The said bottom is also guttered or creased in its upper surface, and provided with suitable outlet holes, as shown, to
27 pass off any moisture which may have condensed within the box. The upper part of said end *b* is also provided with a suitable staple, *e*, by which, together with the hinged hasp, *f*, and suitable padlock, *g*, the whole elbow piece, B, is properly fastened when the said removal opening is closed. The said elbow piece, B, is also provided with two quadrantal cheeks, *h*, one on each corner of said elbow, which, together with said end piece, *b*, serve to prevent the mail matter from spilling out when said piece is tilted.

To deposit mail matter in the box A there are two openings or entrances—one a horizontal slot, *i*, near the top of the front end of the letter-box, and having its edges beveled upward to give entering packages an upward direction, the other a longitudinal slot, *k*, through the curved top or roof of the same. The entrance, *i*, is protected from weather exposures by the rigid hood, *m*, cast in one with the front end piece of the box, instead of the hinged lid now in use, so as to form a projecting cover or cowl over said opening, but not so close as to prevent the easy access of letters and papers. The other entrance, *k*, is also made weather-proof by similar means. Immediately below or at the base of each of said entrance, *i*, and *k*, there is suitably and rigidly attached within the letter-box a toothed slide, *s*, and *s* inclined downward sufficiently to allow the easy introduction of mail matter, and yet projecting far enough beyond the area of said entrances to prevent the extraction of anything once within the box. There is also provided a curve or arching plate, *n*,

28 firmly and suitably fixed within the top and rear end of the letter-box, and so placed opposite the entrance, *i*, as shown, as to make a constantly divergent surface to the said edges of said entrance, and thereby direct downward the end of any long package, after being introduced, as aforesaid, and so prevent its lodging between the slide *s* and the upper and rear end of the box.

Having thus described my invention, I claim as new, and desire to secure by letters patent the following:

1. In the drop-letter box A, the elbow piece B, herein described, provided with the trunnions, *a*, the cheeks, *d*, and the staple, *c*, in combination with the ledge, *d*, as and for the purposes specified.

2. The combination, in a street letter-box, of the letter opening, *i*, the rigid external hood, *m*, the internal chute, *s*, and the curved plate, *u*, in the upper part of the box, opposite the letter opening, *i*, extending downward to or below the level of said letter opening.

SAMUEL STRONG.

Witnesses:
R. H. STEELE.
A. W. KIRK.

(EXHIBIT "G" TO PETITION.)

Copy of Original Specification in the Application for Letters Patent by Samuel Strong, Filed on March 9th, 1874.

"Specification."

To all whom it may concern:

29 Be it known that I, Samuel Strong, of the city of Washington and District of Columbia, having invented new and useful improvements in letter-boxes, that I style "the round-top letter-box."

And I do hereby declare the following to be an exact description thereof, reference being had to the accompanying drawings, and to the letters of references marked thereon, making a part of this specification, in which.

Figure 1, represents the front view and elevation where the letters are deposited and taken out the upper door for the reception of the letters and papers, and the lower one for taking them out.

Figure 2, the opposite end view and elevation, that is plain without any door.

Figure 3, represents the bottom of the box, with its longitudinal grooves, the whole length of the bottom.

Figure 4, is a side elevation of the letter-box, showing its aperture for depositing the letters, and the open door and the fastening on the outside to attach the box to a post.

Figure 5, shows the opposite side of the box, with a square moulding intended for the number of the mail-carrier.

The nature of my invention in the construction of cast-iron letter-box, with a grooved bottom L, square front door G, with safety-sides J, aperture A, with falling door B, and water-proof ledge D, round-

top R, and incline guard E, combined and arranged as a cheap, ornamental, and perfectly secure letter-box.

A, represents the slot or aperture, with falling door B, on hinges c, c, through which the letters and papers are dropped; the door hangs over, or laps over upon a projected ledge D, so as to prevent any rain or water getting into the box. From the lower edge of the aperature A, on the inside of the box, an incline
30 or sloping guard, E, projects downward to the whole width of the box, as shown by the dotted lines forming an angular chamber, the wide and open part below, about three or four inches wide, that aids the letters and papers in falling regularly to the bottom of the box, and effectually covers the ends of the letters and papers so as to prevent their being removed or abstracted from the box. G, is the square door that is fastened with a hasp H, and common padlock; and, when the letters are to be withdrawn by the mail-carrier, he unlocks it, and the door G, falls forward, not to a level, but far enough to remove the letters and papers, whilst the sides J, protect and prevent them from slipping or falling out or upon the ground; the door working on the lower hinges K, and the ends of the sides J, catching at their top ends to hold the door open at its proper angle. The bottom I, of the interior of the box, is channelled in grooves, that letters and papers are prevented from sticking close to the bottom; can be easily lifted up and removed, and carry off any water that might accidentally get in.

The one side M, has a square molding in which the number of the letter-carrier is intended to be painted or fastened upon. To the opposite side N, the curved clips or fastenings P, are attached to secure the box safely to a lamp-post, or any other permanent supporter. The round top R, completely prevents any rain or water from entering the box.

What I claim as my invention, and desire to secure by letters patent, is:

31 The cast-iron letter-box, constructed with a grooved bottom, I, square front door, G, with its safety sides J, receiving aperture, A, with its falling door, B, and water-proof ledge, D, round top, R, and incline guard, E, when arranged and combined as herein described and for the purpose set forth.

SAMUEL STRONG.

Witnesses:
J. FRANKLIN REIGERT.
A. D. ROCKAFELLOW.

(EXHIBIT "H" TO PETITION.)

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the files of this office of amendment E filed March 18, 1890, in the matter of the application of Samuel Strong, assignor by mesne assignments to

George E. Kirk, filed March 9, 1874, serial number B, 686, for improvement in letter-box.

In testimony whereof, I, C. E. Mitchell, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 11th day of February, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the one hundred and fifteenth.

C. E. MITCHELL,
Commissioner.

[SEAL.]

To the Commissioner of Patents:

32 In the matter of the application of Samuel Strong for letters patent for improvement in street letter-boxes, No. B 686, filed March 9, 1874, the amended specification and claims marked D, and filed March 23, 1889, are hereby amended by striking out the whole of said specification and claims and substituting therefor the following:

"My invention is an improvement upon my previously patented street letter-boxes, and embraces the following peculiar features: A rectangular, close-jointing, metallic box, having a semi-cylindrical or arched top with eave and gable projections, and a corrugated bottom, having moisture vents in its front or door edge, two vertical lugs on its front end, forming the corresponding halves of the pair of exit door hinges, and a pair of slotted bolt lugs vertically rising from each of its side edges; also, underneath one end of said overhanging gable roof, a rectangular, top-ledged and bottom-ledged, slot entrance made through the front end plate, and covered with a closely hung flap-door, closing by gravity; also, an internally declined slide-plate, projecting slopingly inwards from the lower edge of said entrance slot; also, below said flap-door, a bottom-hinged and outwardly swinging plate door, closing tightly under a protective weather-ledge and over a corresponding exit port, and having overlapping side flanges, a pair of triangular side plates or wings, a protective flange or gutter upon its lower edge, a lock staple and hasp, and a chock flange on its upper edge upon which said hasp closingly engages; and, finally, upon the front side of said box, a rectangular frame or time-card holder; all of which,

33 and their purposes are hereinafter more fully described, and illustrated by the accompanying drawings, in which like letters designate identical parts of said invention in the different figures respectively.

Figure 1 is a perspective view of the box, viewed from the front, showing the round top, the lower front end plate or exit door open, and the position of the time-card frame on the front side plate.

Figure 2 is an elevation of the rear side plate, viewed from the interior, showing the four bolt holes through which pass the clips for attaching the box to the lamp-post; said plate being, in detail, the reversed counterpart of the front side plate, with the exception of side holes. The figure to the right is a section on the line $x—x$, and the figure below is a section on the line $y—y$, of Fig. 1.

Figure 3 is an elevation of the rear end plate, viewed from the

exterior; the figure to the right being a section on the line *z*—*z*, of Fig. 3.

Figure 4 is a perspective view of the bottom plate, viewed from the interior; the figure to the left being a section on the line *e*—*e* of Fig. 4, and particularly showing its corrugated form.

Figure 5 is an elevation of the upper front end plate, viewed from the exterior, showing the upper or mail deposit door; the figure on the right being a section on the line *s*—*s* of Fig. 5.

Figure 6 is a section through the lower front end plate, or mail remove door, taken on the line *t*—*t* of Fig. 1, particularly showing the flange at the bottom of the door and the shape of the wings.

Figure 7 is a view of the letter slide; the figure below being a section through the line *u*—*u* of Fig. 7.

34 The letter A represents said letter-box, made generally of cast iron, the top, sides, ends, and bottom being cast in separate plate pieces, with suitable means for securing the plates together in weather-tight joints.

The top, R, is made in the form of a semi-cylindrical arch, so that its lower edges, and a suitable bead or moulding, *b''*, or its under side near either end, shall overlap the side and end plates of the box, rest on the shoulders, *c* and *d*, formed on said plates, closely jointing therewith, and thus produce a completely protective water shed over the box chamber and its contents.

The side plates, G, are constructed with flanges, *e'*, *e''*, at their bottom and rear edges, and at the upper part of their front edges, as shown, so as to overlay and form weather-tight joints with the bottom plate L, and the front and rear end plates, E and D. For the purpose of more firmly securing the end and bottom plates in position, the check knobs, *m*, *n*, are provided, suitably placed and projecting from the interior surface of said side plates, as shown. In the rear side plates are two pairs of bolt holes, *p*, *p'*, through which pass the clips or yokes that attach the letter-box to the lamp-post. At the upper and lower edges of the plates are placed two pairs of bolt-holes, *b''*, *b'*, which are in range with the corresponding bolt-holes, *b*, and the lug slots, *l'*, when the top, bottom, and sides are in place, and through which these several parts are bolted or riveted together.

Upon the lower end of the rear end plate, D, is formed the flange, *d''*, which overlaps and closely joints with the rear edge of the bottom plate, L.

35 The bottom plate, L, is corrugated, as shown, its upper grooved surface serving to collect and drain away, through the notches or vents, *r*, any moisture produced by condensation within the box; and said corrugated form combines lightness, strength, and cheapness of construction in the most effective way, while protecting the mail matter from defacement and facilitating its removal by the collector. Said bottom plate is provided, also, with a pair of lugs, *l*, suitably placed and projecting vertically downwards from the front end of said plate, as shown, so as to form each the corresponding knuckle of one of the pair of hinges, *f'*, by which the exit door, F, is opened and closed. Said corrugated plate is also pro-

vided with the two pairs of bolt lugs, *l'*, one pair vertically rising, as shown, from each of its side edges, and each lug having a similar slot made in its upper end, as shown, so that when said bottom plate is in place, said lug slots are brought into range with the corresponding countersink bolt holes, *b'*, above described, made through the box sides, and by means of nut-bolts securely fix said bottom plate in place within the bottom edges of the box, as shown.

For the convenient and safe deposit of mail matter within the box, the following elemental parts are combined, namely: The entrance or deposit port, *e*, is made, in the form of a suitably narrow and rectangular slot, through the upper or gable portion of said front end plate, as shown; said front plate rests upon the shoulder *e'''* of the side plates, and is securely held in position by the overlapping flanges of said side plates; overhanging said slot on the out-
36 side is the ledge *e'*, sloping downward, and underlying it on the inside is the ledge *e''*, sloping upward, said two ledges protecting the contents of the box from rain when the deposit port is open; said port is also protectively covered with a top-hinged swinging door H, consisting of a cast plate in the form shown, having a water-shedding top or hood, *h*, and hung by the hinges, *h'*, above the port, so as to fall by gravity closely over said entrance, as shown, thereby protecting it from the rain; and, lastly, within the box an inclined guard plate, S, between the rest *m* and the knob *m'*, is fixed projecting from the side plates, as shown, with its upper edge closely against the bottom of said entrance port, over which the deposited matter slides into the box chamber below. The lower edge of said slide plate may be serrated, if desired, to further prevent improper withdrawal of the mail after it is deposited in the box.

For the proper and convenient removal of the mail from the box, the exit port, G, is made below said entrance port, by limiting the height or length of said front end plate, as shown; thus allowing said exit port to be about one-half of the lower portion of said front end. This removal port is suitably and protectively closed by the downwardly swinging door, F, united to said bottom plate, L, by the hinges *f''*, as shown. Said swinging door is provided with the triangularly-shaped side plates or wings, *g*, cast in the same door piece, which not only hold the mail from escaping to the ground when the door is swung outwards, but serve to support the door from falling entirely down by their top or inner ends being checked against the top of the open doorway, as shown. Said door plate is also furnished, along its bottom and hinging edge, with an interme-
37 diate and backwardly projecting angle flange or gutter, *f'''*, as shown, for preventing letters from escaping through the chink or gap made between the bottom of the box and that of said opened door. The exit door is also closed underneath the weather ledge, *i*, which projects forward from the bottom edge of said front end plate, as shown, and upon which is centrally riveted the hasp, J, which, by closing over the lock staple, *j*, of the shut door, permits the latter to be securely padlocked. Said exit door is also furnished with the side flanges, *f*, which overlap the lower part of the side

plates, as shown, and thus make a completely weather-tight joint. In order to secure said lower door in place, the hasp chock, *k*, is provided, which, in the form of a central lip or flange, projects from the upper edge of the door, as shown, so that, when the door is closed and the hasp turned down, as aforesaid, the inner face of the bent hasp presses against the inclined front face of said chock flange, and thus keeps the door firmly jammed in place. For the hasp, hasp chock, and staple, any other suitable locking device may be substituted.

Against the outer edges of the rectangular countersink, *a*, made in the central portion of the front side plate of said box, is fastened a suitable frame, *a'*, as shown, to serve as a label or placard holder, and within which to securely place any official notice in relation to the mail service.

Having thus fully described my invention, what I claim as new and desire to secure by letters patent is:

1. The street letter-box, formed of separate plates securely bolted together, having an arched and overlapping eave and gable roof, weather jointed and flanged side and end plate, and a grooved floor, said floor being fixed within the bottom flanges of the side and end plates, and having moisture vents, and having hinge knuckles on its front end; in combination with an upper mail deposit port, furnished with inclined slide-plate, overhanging ledge, and swinging door; and with a lower mail removal port, furnished with the bottom hinged door, having inclosing and supporting wing-plates, protective angle flange, overlapping side flange, lock staple, hasp, and hasp chock, substantially as and for the purposes herein specified.

2. The street letter-box, formed of separate plates securely bolted together, having an arched and overlapping top, weather-jointed and flanged sides and ends, and the bottom plate having corrugated surfaces, moisture vents, and hinge knuckles, in combination with an upper mail-deposit port, furnished with inclined slide plate, overhanging ledge, and swinging door; and with a lower mail-removal port, furnished with the bottom hinged door, having inclosing and supporting wing plates, protective angle flange, overlapping side flanges, lock staple, hasp, and hasp chock, substantially as and for the purposes herein specified.

3. The swinging door, having a hooded top, in combination with the deposit port of a street letter-box, having the overhanging weather ledge and adjoining slide-plate, substantially as and for the purposes herein specified.

4. The swinging door, having inclosing and supporting side plates, bottom flange, overlapping side flanges, and bottom hinges, in combination with the removal port of a street letter-box, having the overhanging weather ledge, substantially as and for the purposes herein specified.

5. The arched roof, having eave and gable projections, in combination with the weather jointing sides, ends, and grooved floor of a

street letter-box, substantially as and for the purposes herein specified."

Very respectfully,

SAMUEL STRONG,
By ELLIS, JOHNS & McKNIGHT,
His Attorneys.

EXHIBIT "I" TO PETITION.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *Sept.* 19, 1890.

Samuel Strong, ass'or to Ellis, Johns & McKnight, city.

SIR: Your application for a patent for an improvement in street letter-box, filed March 9th, 1874, has been examined and allowed.

The final fee, twenty dollars must be paid, and the letters patent bear date as of a day not later than six months from the time of this present notice of allowance.

If the final fee is not paid within that period the patent will be withheld, and your only relief will be by a renewal of the application, with additional fees, under the provisions of section 1897, Revised Statutes. The office aims to deliver patents upon the day of their date, and on which their term begins to run; but to do this properly applicants will be expected to pay their final fees at least twenty days prior to the conclusion of the six months allowed them by law. The printing, photographing, and engrossing of the several patent parts, preparatory to final signing and sealing, will consume the intervening time, and such work will not be done until after payment of the necessary fees.

When you send the final fee you will also send, distinctly and plainly written, the name of the inventor and title of invention as above given, date of allowance, (which is the date of this circular,) date of filing, and, if assigned, the names of the assignees.

If you desire to have the patent issue to assignees, an assignment containing a request to that effect, together with the fee for recording the same, must be filed in this office on or before the date of payment of final fee.

Additional copies of specifications and drawings will be charged for at the following rates: Single copies, uncertified, 25 cents; twenty copies or more, 10 cents each. The money should accompany the order.

Very respectfully,

C. E. MITCHELL,
Commissioner of Patents.

DEPARTMENT OF THE INTERIOR,
U. S. PATENT OFFICE,
WASHINGTON, D. C., *Sept.* 19, 1890.

Samuel Strong, ass'or to Ellis, Johns, and McKnight, city.

SIR: You are informed that the final fee of twenty dollars has

been received in your application for improvement in street letter-box.

Very respectfully, C. E. MITCHELL,
Commissioner of Patents.

41 III. *Amended Petition. Filed January* 15, 1892.

1. The claimant herein is the assignee of the entire interest and property of certain improvements in so-called "street letter-boxes," made by Samuel Strong, inventor of said improvements, upon inventions for which several letters patent were issued to him, as hereinafter stated; and the said Samuel Strong is the assignor of said interest and property to said claimant, by deed of assignment, dated the 26th day of January, A. D. 1881, and recorded in Liber F 26, page 226, of Transfer of Patents, in the United States Patent Office, a copy of which assignment is hereto annexed, marked Exhibit "A." (See page — of this Record.)

2. The said assignment transfers from said assignor to said assignee, the whole and exclusive rights, titles and interests secured to said assignor by the said letters patent, as described in said deed of assignment, together with all rights of action both in equity and at law, as included therein; the said letters patent were issued to the said Samuel Strong, assignor, and also to said assignee

42 by the United States, the defendant in this cause, through one of the executive departments of the same, on March 30, 1869, and numbered 88528; on August 31, 1869, numbered 94439; on February 7, 1882, numbered 253,236; and an application for letters patent was made by said Samuel Strong on March 9, 1874; and the patent was issued on October 27, 1891, numbered 462,224, to George E. Kirk, assignee of said Strong, printed copies of the respective specification of which are hereto annexed, marked as Exhibits "D," "E," "F," "G," "H," and "M."

3. On or about the 15th day of September, 1869, the said Samuel Strong, being the sole owner and proprietor of said inventions and of the letters patent then issued thereon, entered into and made a certain contract with the United States of America, by the Postmaster General thereof, for the purpose of supplying the said United States with as many of the above-described street letter-boxes as might be required by the said Postmaster General, a certified copy of which contract being hereto annexed, marked Exhibit "B."

4. In the month of January, 1870, a board consisting of a number of postmasters from different places throughout the United States was appointed by order of the Postmaster General to meet at Washington, D. C., to examine and recommend the adoption of street letter-boxes for the use of the Government, and to be selected out of the many boxes filed by inventors, with the Postmaster General for adoption and at his request. On or about the 15th of January, 1870, said board met at Washington, D. C., and recommended for adoption to the Postmaster General the boxes filed with the said board and known as the Samuel Strong boxes, or inventions, and it

was the intention and understanding of the Postmaster Gen-
43 eral, and the defendant and the inventor of said letter-boxes that the invention so selected and adopted should be used by the Government of the United States and a reasonable and just compensation made for the use of the same.

5. On or about the 18th day of February, 1870, the said Samuel Strong made and entered into a contract with the said United States by the Postmaster General thereof to furnish said street letter-boxes, for the use of the said United States, for a term of four years, from and after the execution of the contract; a certified copy of which is hereto annexed, marked Exhibit "C."

6. In pursuance of said contract, made on the 18th day of February, 1870, the United States paid to the said Samuel Strong the sum of $3.50 for the use of each and every box which he furnished during the existence of said contract.

7. The claimant further says, that the said Government of the United States, since the 18th day of February, 1874, has caused to be made, and has constantly and continuously used, and is now ordering, using and continuing to use the said street letter-boxes, of substantially the said letters patent in all the cities, towns, or places of the United States, where said street letter-boxes are used; and that all the said letter-boxes wherever used by the defendant in any portion of the United States for the deposit of letters by the public are substantially the same as those covered by the claims of the aforesaid application for letters patent and now owned by the said claimant.

44 8. Claimant further says that the United States has, since the 18th day of February, 1874, neglected to pay to the said Samuel Strong, or his order, or to pay any other persons for his use and benefit, or the said claimant, George E. Kirk, any sum of money for the use of the said street letter-boxes; and, therefore, the said Government of the United States, in accordance with the statutes of the United States making special provision therefor, and under an implied contract, is owing said claimant a lawful, just and proper compensation for the use of the said street letter-boxes and the improvements therein made, viz., the sum of three dollars and fifty cents ($3.50) upon each and every one of said boxes furnished and used by the defendant.

9. Your petitioner demands judgment against the said defendant for the sum of three dollars and fifty cents upon each so-called street letter-boxes and improvements thereon made, furnished to and used by the defendant, or any of its officers, or employees, from and after the 18th day of February, 1874, or for any portion of said time from and after the aforesaid date of the termination of said contract and the number of street letter-boxes so used by defendant are "40529" boxes since the 18th day of February, 1874.

10. The claimant further says that he is the owner in his own right, of all the said property; that is, of all of said improved inventions, together with all the exclusive rights, title, and interest therein and thereto appertaining, in virtue of the aforesaid assignment, excepting an assignment of one-twentieth part of the amount

recovered herein on 20,276 boxes, and assigned as fees for
45 attorneys in representing this claimant in his application for patents.

II. Claimant further says, that he is a citizen of the United States, and that he has not brought any claim herein described before the Congress of the United States or any executive department of the Government thereof.

GEO. E. KIRK, *Claimant.*

DISTRICT OF COLUMBIA, } ss:
City of Washington, }

Personally appeared before me George E. Kirk, personally known to me to be the person described, who signed the foregoing statement in my presence, and made oath that the same was true, except as to any portions therein stated on information and belief, and to those he makes oath that he believes, and has cause to believe, the same to be true.

GEO. E. KIRK.

Sworn to and subscribed before me, this 14th day of January, A. D. 1892, and I certify that I am well acquainted with the affiant and know him to be a citizen of the District of Columbia.

[SEAL.] SAML C. MILLS,
Notary Public.

(NOTE.—The exhibits to this amended petition are the same as those annexed to the preceding amended petition filed January 26, 1891, except Exhibit M, which is hereto annexed.)

46 EXHIBIT M TO PETITION.

UNITED STATES OF AMERICA:

No. 462,224.

To all to whom these presence shall come:

Whereas Samuel Strong, of Washington, District of Columbia, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in street letter-boxes, he having assigned his right, title, and interest in said improvement by mesne assignments to George E. Kirke, of same place, a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas upon due examination made the said claimant is adjudged to be justly entitled to a patent under the law.

Now, therefore, these letters patent are to grant unto the said George E. Kirke, his heirs or assignes, for the term of seventeen years from the twenty-seventh day of October, one thousand eight hundred and ninety-one, the exclusive right to make, use, and vend

the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States of America the one hundred and sixteenth.

[SEAL.] CYRUS BUSSEY,
Assistant Secretary of the Interior.

Countersigned.

W. E. SIMONDS,
Commissioner of Patents.

It is hereby certified that the name of the assignee in letters patent No. 462,224, granted October 27, 1891, upon the application of Samuel Strong, of Washington, District of Columbia, for an improvement in "street letter-boxes," was erroneously written and printed "George E. Kirke," whereas said name should have been written and printed George E. Kirk; and that the said letters patent should be read with this correction therein, that the same may conform to the files and records of the case in the Patent Office.

Signed, countersigned, and sealed this 3rd day of November, A. D. 1891

[SEAL.] CYRUS BUSSEY,
Assistant Secretary of the Interior.

Countersigned.

W. E. SIMONDS,
Commissioner of Patents.

47 IV.—*Defendant's Answer to Amended Petition. Filed May 2, 1892.*

The defendant, answering the petition herein, says:

(1) That the Government denies each and every material allegation in the said amended petition contained.

(2) That the claimant is not the assignee of Samuel Strong.

(3) That if the claimant is Strong's assignee he cannot have and possess any rights which Strong would not have in the absence of any assignment.

(4) That Samuel Strong is not the inventor of the so-called round-top street letter-box, embraced in letters patent No. 462,224, but the same was planned and invented by the Post Office Department of the United States.

(5) That the devices embraced in said letters patent are not novel.

(6) That if Strong was the inventor of said box he abandoned it to the public by his contract of February 18, 1870, in the "findings," and his furnishing said box to the Post Office Department thereunder for more than two years before he made application for patent thereon.

(7) That the said box has been and was in public use for more

than two years prior to March 9, 1874, the date of application for letters patent thereon; and that there was more than a two years' public user of the devices embraced in the "amended" application prior to the date of such amended application.

JOHN B. COTTON,
Assistant Attorney General.

JOHN C. CHANEY,
Assistant Attorney.

18 V.—*Findings of Fact and Conclusion of Law. Filed by the Court January 3, 1893.*

This case having been tried by the Court of Claims and the argument of counsel heard the court makes the following findings of fact:

I.

That the claimant herein, George E. Kirk, is a citizen of the United States and the assignee of one Samuel Strong in certain interests and rights of action in and to certain letters patent for a cast-iron street letter-box as hereinafter more particularly found.

II.

That on the 30th of March, 1869, there were granted and issued to said Samuel Strong letters patent No. 88525 for improvement in street letter-boxes; and thereafter, to wit, on the 31st of August, 1869, there were granted and issued to said Strong certain other letters patent No. 94449; also for improvement in street letter-boxes, as set forth in the respective specifications therefor, made part of the petition herein as Exhibits D and E, and that the said Samuel Strong is the patentee and assignor of said inventions.

III.

That on the 15th of September, 1869, the said Samuel Strong entered into a contract in writing with the defendant, through the Postmaster General thereof, which is annexed to the petition herein as Exhibit B.

IV.

That while said contract was in force, to wit, on the 27th of September, 1879, the said Samuel Strong executed the following instrument in writing:

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Samuel Strong, September 27th, 1869, and recorded in Liber A 12, page 633. Said record has been carefully compared with the original and is a correct transcript thereof.

the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this twenty-seventh day of October, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States of America the one hundred and sixteenth.

[SEAL.] CYRUS BUSSEY,
Assistant Secretary of the Interior.

Countersigned.

W. E. SIMONDS,
Commissioner of Patents.

It is hereby certified that the name of the assignee in letters patent No. 462,224, granted October 27, 1891, upon the application of Samuel Strong, of Washington, District of Columbia, for an improvement in "street letter-boxes," was erroneously written and printed "George E. Kirke," whereas said name should have been written and printed George E. Kirk; and that the said letters patent should be read with this correction therein, that the same may conform to the files and records of the case in the Patent Office.

Signed, countersigned, and sealed this 3rd day of November, A. D. 1891

[SEAL.] CYRUS BUSSEY,
Assistant Secretary of the Interior.

Countersigned.

W. E. SIMONDS,
Commissioner of Patents.

47 IV.—*Defendant's Answer to Amended Petition. Filed May 2, 1892.*

The defendant, answering the petition herein, says:

(1) That the Government denies each and every material allegation in the said amended petition contained.

(2) That the claimant is not the assignee of Samuel Strong.

(3) That if the claimant is Strong's assignee he cannot have and possess any rights which Strong would not have in the absence of any assignment.

(4) That Samuel Strong is not the inventor of the so-called round-top street letter-box, embraced in letters patent No. 462,224, but the same was planned and invented by the Post Office Department of the United States.

(5) That the devices embraced in said letters patent are not novel.

(6) That if Strong was the inventor of said box he abandoned it to the public by his contract of February 18, 1870, in the "findings," and his furnishing said box to the Post Office Department thereunder for more than two years before he made application for patent thereon.

(7) That the said box has been and was in public use for more

than two years prior to March 9, 1874, the date of application for letters patent thereon; and that there was more than a two years' public user of the devices embraced in the "amended" application prior to the date of such amended application.

JOHN B. COTTON,
Assistant Attorney General.

JOHN C. CHANEY,
Assistant Attorney.

18 V.—*Findings of Fact and Conclusion of Law. Filed by the Court January 3, 1883.*

This case having been tried by the Court of Claims and the argument of counsel heard the court makes the following findings of fact:

I.

That the claimant herein, George E. Kirk, is a citizen of the United States and the assignee of one Samuel Strong in certain interests and rights of action in and to certain letters patent for a cast-iron street letter-box as hereinafter more particularly found.

II.

That on the 30th of March, 1869, there were granted and issued to said Samuel Strong letters patent No. 88525 for improvement in street letter-boxes; and thereafter, to wit, on the 31st of August, 1869, there were granted and issued to said Strong certain other letters patent No. 94449; also for improvement in street letter-boxes, as set forth in the respective specifications therefor, made part of the petition herein as Exhibits D and E, and that the said Samuel Strong is the patentee and assignor of said inventions.

III.

That on the 15th of September, 1869, the said Samuel Strong entered into a contract in writing with the defendant, through the Postmaster-General thereof, which is annexed to the petition herein as Exhibit B.

IV.

That while said contract was in force, to wit, on the 27th of September, 1870, the said Samuel Strong executed the following instrument in writing:

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing executed by Samuel Strong, September 27th, 1869, and recorded in Liber A 12, page 333. Said record has been carefully compared with the original and is a correct transcript thereof.

49 In testimony whereof I, M. V. Montgomery, Commissioner of Patents, have caused the seal of the Patent Office to be affixed this 9th day of April, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

[SEAL.] M. V. MONTGOMERY,
Commissioner.

(Liber A 12, 333. 5—5. Sep. 27, '69. S. S. 5—5.)

In consideration of the sum of thirty thousand dollars, lawful money of the United States, to me in hand paid by Gideon L. Walker, of the city of Washington, District of Columbia, the receipt whereof is hereby acknowledged, I do hereby sell, assign, and transfer unto him, the said Gideon L. Walker, all my right, title, and interest in and to the letters patent of the United States, described as follows, to wit: No. 88528, for an "improvement in street letter-boxes," issued and granted to me March 30th, 1869; also No. 94449, for "improvement in letter-boxes," issued and granted to me August 31st, 1869.

The said letters patent and each of them as above described to be held, used, and enjoyed by him, the said Gideon L. Walker, or his assigns, to the full end of the term for which each of said letters patent are granted, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

And I do hereby also sell, assign, and transfer unto him, the said Gideon L. Walker, all my right, title and interest in and to a certain invention in street letter-boxes, as fully set forth and described in the specifications which I have prepared and filed preparatory to obtaining letters patent from the United States therefor.

And I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said Gideon L. Walker, as my assignee, for the sole use and behoof of the said Gideon L. Walker and his legal representatives.

In witness whereof I hereunto set my hand and seal this 27th day of September, A. D. 1869.

SAMUEL STRONG. [SEAL.]

In the presence of—
JOHN I. WEED.

(Recorded Oct. 18, 1869. Ex'd: A. C. W.; E. L. L.)

Which instrument in writing was duly entered of record in the Patent office October 18, 1869, as provided by law, but whether letters patent were ever issued to said Walker, or anyone else, for the invention in street letter-boxes, for which, said Strong says in said assignment, he had prepared and filed specifications, or what such specifications were does not appear.

V.

That the cast-iron street letter-boxes so contracted to be furnished by said Strong for the use of the Post Office Department were so furnished by him, and were the street letter-boxes for which said Strong had secured letters patent for the box known as the "flat-top" letter-box, but complaints were made to the Postmaster General by postmasters and others, in cities where said boxes were in use, to the effect that said street letter-boxes were too wide, unsightly in appearance, and unsatisfactory, and in consequence of such complaints, the Postmaster General convened, at the city of Washington, D. C., a convention of postmasters and other postal officials, "to consult in regard to the general good to the postal service;" and said postmasters and other postal officials met in convention in said city in the month of January, 1870, and had before them for inspection several models for and of street letter-boxes, including the one then in use being furnished by said Strong under his contract aforesaid, but said convention rejected all such models, and, endeavoring to avoid conflict with any existing patent, devised a street letter-box, based on their "own experience" and reported to the Postmaster General January 15, 1870, recommending the adoption of such box in these words:

EXHIBIT A.—POSTAL AFFAIRS.

(Washington, January 15, 1870.)

The Postal Convention.—Letters to the Postmaster General in regard to improvements in the postal service.—Reduction of fees for registered letters and postage on printed matter recommended.

WASHINGTON, *January* 15, 1870.

Hon. J. A. J. Creswell, Postmaster General:

The undersigned, postmasters and special agents, having met at Washington by your invitation for consultation in regard to the general good to the postal service, respectfully submit the following recommendations and suggestions:

Street letter-boxes.

That we condemn the street letter-box now furnished the department under the contract known as the "Strong patent," and we would respectfully recommend the adoption of a street letter-box about one and a half feet in length, about six inches in depth, and twelve inches in width, with an opening at the top sufficiently large to receive newspapers and magazines, the opening or receptacles specially protected from the weather with a curved top to carry off the water, and a door in the side or front, with side flanges, to take the matter from, and that the hours for collection be distinctly shown upon the outside of the box. Upon the request of the postmaster

at any office the aforesaid described box should be furnished with an aperture for the receival of letters only.

P. H. JONES,
Postmaster, New York.
H. H. BRIGHAM,
Postmaster, Philadelphia.
A. W. DENNISON,
Postmaster, Baltimore.
JAMES GAYLOR,
Special Agent, New York.
F. A. EASTMAN,
Postmaster, Chicago.
WM. L. BURT,
Postmaster, Boston.
W. R. HOLLOWAY,
Postmaster, Indianapolis.
JOSEPH W. BRIGGS,
Special Agent in Charge of Carrier System.
SAMUEL SMITH,
Of New York Post Office.

VI.

That pursuant to the recommendations so made to the Postmaster General as aforesaid, and in accordance therewith, a street letter-box was devised and adopted by the Postmaster General, known as the "Round-top;" and the said Samuel Strong was engaged to model, manufacture, and furnish to the Post Office Department such boxes, with "such alterations and improvements therein" as the Postmaster General might suggest, as provided in a written contract therefor, entered into by and between the said Samuel Strong and the defendant, through the Postmaster General, on the 18th of February, 1870, for the period of four years therefrom, which contract is made a part of the petition herein as Exhibit C, and which contract, in terms, superseded and annulled the contract—heretofore made between the same parties on the 15th of September, 1869.

51 That under said contract of February 18, 1870, and during the existence thereof, the said Samuel Strong did model and manufacture boxes with such "alterations and improvements therein" as were suggested by the Postmaster General, until boxes giving satisfaction to the Postmaster General had been made; and that boxes so modeled and manufactured by said Strong as aforesaid, were the boxes furnished by him to and for the use of the Post Office Department, under and during the existence of his said contract and none other, for which he was paid $5.50 for each of the small size and $7.50 for each of the large size of said box.

VII.

That a few days prior to the expiration of said contract, to wit, on the 11th of February, 1874, the said Strong filed in the Patent Office

a caveat, and thereafter, to wit, March 9, 1874, his application and specifications, which latter are made a part of the petition herein as Exhibit G, claiming to be the inventor of the cast-iron street letter-box so devised and adopted by the Postmaster General as aforesaid; and thereafter, to wit, on the 18th of March, 1890, said Strong filed amended specifications, under his said application for a patent on said street letter-box so devised by the Postmaster General as aforesaid, which specifications are made part of the petition herein as Exhibit H; and which letter-box so devised and adopted by the Postmaster General was modeled and manufactured by said Strong under the instructions of the Postmaster General as provided should be so done in his said contract, and that the said boxes so modeled, manufactured, and furnished by said Strong were in public use in the letter-carrier cities of the United States for more than two years prior to the 9th day of March, 1874, the date when said Strong filed his application for a patent thereon as aforesaid.

VIII.

That pending the application of said Strong for letters patent on the said street letter-box so devised as aforesaid, to wit, on the 29th of July, 1874, the Postmaster General addressed a letter, put in evidence by the claimant, to the Honorable M. D. Leggett, Commissioner of Patents, which letter is as follows:

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *March* 22, 1892.

The chief clerk of the Court of Claims:

SIR: In compliance with your request of the 18th instant I inclose herewith properly certified copy of the protest of the Post Office Department, filed July 29, 1874, against the issue of a patent to one Samuel Strong for improvement in letter-boxes, for use in the case of George E. Kirk *v.* United States, No. 14485, pending in the Court of Claims.

Very respectfully, JOHN W. NOBLE, *Secretary.*

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *July* 29, 1874.

SIR: Mr. Samuel Strong, of this city, has informed this department that he has taken out two caveats to protect his alleged rights to a certain street letter-box now in use in the several letter-carrier cities by authority of this department.

Lest the said Strong should apply for a patent for said box, I desire to submit for your consideration the following statement, with the request that it be placed on the files of your office.

52 The box in question has now been in use for four years, and was furnished by the said Strong under a contract with this department dated Feb. 18th, 1870, running four years from that date. The box in use in the several letter-carrier cities prior to 1870 was also furnished by said Strong, and was condemned by a convention of postmasters and special agents convened in this

city in Jan'ry, 1870, by invitation of the Hon. John A. J. Creswell, then P. M. General, for consultation in regard to the general good of the postal service.

Said convention, among other things, state "That we condemn the street letter-box now furnished the department under the contract known as the 'Strong patent,' and we would respectfully recommend the adoption of a street letter-box about 1½ feet in length, about 6 inches in depth, and 12 inches in width, with an opening at the top sufficiently large to receive newspapers and magazines; the openings or receptacles specially protected from the weather, with a curved top to carry off the water, and a door in the side or front with side flanges to take the matter from, and that the hours for collection — distinctly shown upon the outside of the box. Upon the request of the postmaster at any office the aforesaid described box should be furnished with an aperture for the receival of letters only."

The box above recommended by said convention was reduced to shape and form by said Strong substantially as described above, and can in no just sense be considered as the invention of the said Strong, he having simply carried out the views of the convention in this respect.

I have, therefore, to request that a patent be not granted to the said Strong for the letter-box now in use and above substantially described.

Very respectfully,

J. W. MARSHALL,
Postmaster General.

HON. M. D. LEGGETT,
Commissioner of Patents.

IX.

That on the 26th of January, 1881, the said Strong executed an instrument in writing made a part of the petition herein as Exhibit A, whereby he assigned all his right and interest in said letters patent and invention to the claimant; but it does not appear that the said Gideon L. Walker, to whom said Strong had theretofore executed an assignment in writing as heretofore found, consented to said assignment so made to the claimant, or that letters patent were ever issued to claimant or any one else on the application of September 4, 1869, referred to in said written assignment.

X.

That thereafter, to wit, April 1, 1881, the said Strong filed his certain other application in the Patent Office, claiming to be the inventor of certain improvements to a street letter-box, as set forth in his specifications therefor, made part of the petition herein as Exhibit F, and on the 7th February, 1882, letters patent No. 253,236 appear to have been issued therefor to said Strong, but it does not appear that the claimant has any interest therein.

XI.

That after the filing of the original petition in this case, to wit, on the 27th of October, 1891, there were issued to the claimant, George E. Kirk, assignee of said Samuel Strong, letters patent No. 462,224, which letters patent are made a part of the petition herein as Exhibit M, and which said letters patent cover the same and identical street letter-box adopted by the Postmaster General, known as the "round top," and which was modeled and manufactured by said Strong as hereinbefore set forth.

XII.

That subsequent to the 18th of February, 1874, the date when the said contract with said Strong expired, the Postmaster General contracted with the Union Foundry and Manufacturing
53 Company, of Reading, Pa., and others, at divers times, to manufacture and furnish to and for the use of the Post Office Department the same and identical kind of street letter-boxes theretofore modeled, manufactured, and furnished by said Strong under his contract aforesaid; and it does not appear that the contracts for the boxes to be furnished were with the knowledge or consent of said Strong or the claimant.

That from the 27th of October, 1878, being six years prior to the time of filing the original petition herein, up to the date of filing the last amended petition herein, January 15, 1892, there were purchased by the Postmaster General for use by the Post Office Department about 35,000 of said letter-boxes, but what number of such boxes, if any, were purchased and used by the Post Office Department subsequent to the 27th of October, 1891, the date when said letters patent were issued to claimant's assignee, does not appear, nor does it appear what number of different size boxes were so purchased and used as aforesaid.

XIII.

That a reasonable royalty for the use of such letter-boxes, as a valid patented device or invention, would be about $1 per box, or $35,000, and it does not appear that claimant was ever paid anything for such boxes.

Conclusion of Law.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is not entitled to recover, and the petition is therefore dismissed.

VI.—*Opinion of the Court.*

PEELLE, *J.*, delivered the opinion of the court:

The claimant, assignee of one Samuel Strong, seeks to recover on an implied contract, royalties for the use of a certain cast-iron street letter-box, purchased and used by the Post Office Department, for

which the claimant as such assignee claims to hold a patent in the right of Strong, patentee.

The facts show that letters patent Nos. 88525 and 94449, which had theretofore been issued to Strong, were assigned to Walker September 27, 1869, who still appears to own the same.

The patent granted to Strong, covered by letters patent No. 253,236, dated February 7, 1882, for which application was made April 1, 1881, appear to be owned by him, so that the only invention or letters patent in which the claimant appears to have any interest in letter-boxes is covered by letters patent 462,224, for what is known as the "Round-top" box, which claimant holds by virtue of an assignment from Strong, the alleged inventor, under date of January 26, 1881, which letters patent were not issued to claimant until October 27, 1891. The claimant can therefore only recover, if at all, for the use of the box covered by the letters patent so issued to him; and as to this box it appears that Strong, under his contract of February 18, 1870, for four years, in part therefor, was to model and manufacture boxes "with such alterations and improvements therein as the Postmaster General may suggest," until boxes giving entire satisfaction to the Posmaster General should be made.

54 It appears that under that contract Strong did model and manufacture boxes, "with such alterations and improvements therein" as were suggested by the Postmaster General, until a box identical with the one covered by Letters Patent No. 462,224, so held by claimant, had been made; and the boxes so modeled and manufactured by him, and none other, were furnished to and for the use of the Post Office Department under and during the existence of his said contract, for which he was paid $5.50 for each of the small size and $7.50 for each of the large-size boxes, as provided in said contract. This contract in terms superseded and annulled the former contract with Strong to furnish letter-boxes, as such boxes had been condemned by a convention of postmasters.

After the expiration of Strong's contract the Postmaster General contracted with other persons to furnish the same identical kind of boxes theretofore modeled and furnished by Strong, but it does not appear that any of said boxes were purchased and used by the department subsequent to the date of issuing said letters patent to the claimant.

A few days before the expiration of this contract, to wit, February 11, 1874, Strong filed a caveat, and thereafter, March 9, 1874, his application in the Patent Office, claiming to be the inventor of the letter-box which he had modeled, manufactured, and furnished under his contract, but the attention of the Postmaster General being called to the matter, he addressed a letter to the Commissioner of Patents (put in evidence by the claimant), as follows:

POST OFFICE DEPARTMENT,
WASHINGTON, D. C., *July* 29, 1874.

SIR: Mr. Samuel Strong, of this city, has informed this department that he has taken out two caveats to protect his alleged rights

to a certain street letter-box now in use in the several letter-carrier cities by authority of this department.

Lest the said Strong should apply for a patent for said box, I desire to submit for your consideration the following statement, with the request that it be placed on the files of your office.

The box in question has now been in use for four years, and was furnished by the said Strong under a contract with this department dated February 18, 1870, running four years from that date. The box in use in the several letter-carrier cities prior to 1870 was also furnished by said Strong, and was condemned by a convention of postmasters and special agents convened in this city in January, 1870, by invitation of the Hon. John A. J. Creswell, then Postmaster General, for consultation in regard to the general good of the postal service.

Said convention, among other things, states "That we condemn the street letter-box now furnished the department under the contract known as the 'Strong patent,' and we would respectfully recommend the adoption of a street letter-box about 1½ feet in length, about 6 inches in depth, and 12 inches in width, with an opening at the top sufficiently large to receive newspapers and magazines; the openings or receptacles specially protected from the weather, with a curved top to carry off the water, and a door in the side or front with side flanges to take the matter from, and that the hours for collection be distinctly shown upon the outside of the box. Upon the request of the postmaster at any office the aforesaid described box should be furnished with an aperture for the receival of letters only."

The box above recommended by said convention was reduced to to shape and form by said Strong substantially as described above, and can in no just sense be considered as the invention of said Strong, he having simply carried out the views of the convention in this respect.

I have, therefore, to request that a patent be not granted to the said Strong for the letter-box now in use and above substantially described.

Very respectfully,

J. W. MARSHALL,
Postmaster General.

Hon. M. D. LEGGETT,
Commissioner of Patents.

55 It is averred in the petition, among other things, in substance, that a board of postmasters (postal convention), convened by order of the Postmaster General, had recommended for adoption to the Postmaster General, January 15, 1870, the boxes filed with said board and known as the Strong boxes or inventions, and that it was the intention and understanding of the Postmaster General and the inventor that the invention so selected and adopted should be used by the defendants and reasonable and just compensation made therefor.

To entitle the claimant to recover he must show some privity between the defendants, through the Postmaster General who was

authorized to contract in respect thereto, and the claimant or his assignor, from which the court can conclude as matter of law that an implied contract exists. And in this connection we remark that the averment- in the petition stated, looking to that end, are not supported by the facts found. On the contrary it appears that the only knowledge the Postmaster General had as to Strong's claim on the box used is disclosed in his letter to the Commissioner of Patents, set out above, and it was because of the knowledge he then had of Strong's claim, by the caveats, that he objected to the granting of a patent to him, giving as his reasons that Strong was not the inventor of the box, but that the same was the creation of the Post Office Department, brought about by reason of the recommendation of the postal convention recited in said letter; that Strong had reduced the box to shape and form as recommended, carrying out the suggestions of the Postmaster General as provided in his contract; and that the box so shaped and formed had then been in use in the department for four years. The facts show that the box used was under claim of ownership by the department, there being no acknowledgment by the Postmaster General, even tacitly, that Strong was the inventor, but on the contrary his claim of ownership was denied. The use of such box, thereafter, by the department, would not imply a contract to pay therefor, and without a contract, under existing authorities, there can be no recovery. Shillinger's case (24 C. Cl's R., 278).

Having reached this conclusion on the main question, we will not pass upon the validity of the patent, nor the right of an inventor to recover for the use of his invention during the intermediate period between the application for and the granting of a patent.

Our reason for finding the number of boxes purchased and used since October 27, 1878, instead of February 18, 1874, as claimed, is that the statute of limitations applies to all boxes purchased and used more than six years prior to the filing of the original petition herein, as held in Butler's case (23 C. Cl's R., 335).

For the reasons given the petition is dismissed.

56 VII.—*Judgment of the Court.*

GEORGE E. KIRK
v.
THE UNITED STATES. } 14485.

At a Court of Claims, held in the city of Washington, on the third day of January, A. D. 1893, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the defendants, and do order, adjudge, and decree that the petition of the claimant, George E. Kirk, be dismissed.

By the court.

57 VIII.—*Application of Claimant for Allowance of Appeal and for Additional Findings of Fact and Order of the Court Thereon, January* 14, 1893.

GEORGE E. KIRK
vs.
THE UNITED STATES. } 14485.

And now comes the attorney for the claimant and moves this honorable court that he be granted an allowance of appeal to the Supreme Court, under its rules of order and those of this honorable court, from the decision of court "dismissing the petition" in said cause made on January 3rd, 1893.

It is also hereby moved, as aforesaid, that in accordance with the said rules of court and with the judgment of the said Supreme Court in the case of Mahan *v.* United States (81 U. S., 109), your honorable court will please to consider "and find the facts as proven" at the hearing of said cause, in accordance with the said claimant's "request for findings of fact," heretofore made, and to which the consideration of your honorable court is again respectfully called. The claimant's request for said findings is to be found in the printed record of said cause on pages 57 to 66, inclusive, and numbering from 1 to 17, inclusive; and to which the honorable court is most respectfully referred.

Respectfully submitted.

STEELE & HOLMAN,
Attorney- for Claimant.

Order of Court.

Filed January 14th, 1893.

The first request for the allowance of appeal is granted.

The second request for additional findings of fact is overruled.

The court has found all the facts established by the evidence as required by the rules of the Supreme Court.

By the court:

WILLIAM A. RICHARDSON,
Chief Justice.

58 IX.—*Motion That the Clerk of Court be Instructed to Add to "Transcript of Record" Certain "Interlocutory Orders" and "Responses Thereto" Named Herein, with Ruling of Court Endorsed Thereon. Filed Feb'y 6th,* 1893.

And now comes the attorney of record in the above cause and moves the honorable court that the clerk be instructed to add to the transcript of record certified to the Supreme Court on the appeal allowed in said cause on Jan'y 14th, 1893, certain "interlocutory orders" of this court and the respective responses thereto, as hereinafter named, in accordance with rule I of said Supreme Court,

"under which appeals may be taken from this court." Said "interlocutory orders" and responses thereto are as follows, namely: 1, "Order" of date Feb'y 28th, 1891, and "letter of response" dated March 6th, 1891, found on pages 55 and 56 of the printed record used at the hearing in said cause; 2, order of Jan'y 16th, 1892, and response of Jan'y 21st, 1892, on pages 90 and 91 of said record; 3, order of Dec. 2d, 1891, and responses dated Dec. 5th and 7th, 1891, on pages 88 and 89 of said record; 4, order of March 18th, 1892, and response dated March 22d, 1892, on pages 94 and 95 of said record.

Respectfully submitted.

R. H. STEELE,
Att'y for Claimant.

Order of Court.

Overruled. These requests were not submitted to the court by the claimant before the trial, as required by rule V of the regulations of the Supreme Court regulating appeals from the Court of Claims, and embrace evidence forbidden by the first rule of said regulations to be included in the findings.

By the court:

W. A. R., *Ch. J.*

Feb'y 8, 1893.

59 In the Court of Claims.

GEORGE E. KIRK
vs.
THE UNITED STATES. } No. 14485.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the judgment of the court dismissing the petition, of the application of claimant for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this
Seal Court of Claims. 14th day of February, 1893.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Case No. 15,261. Court of Claims. No. 891. George E. Kirk, appellant, *vs.* The United States. Filed February 16, 1893.

Office Supreme Court, U. S.
FILED.
OCT 28 1895
JAMES H. McKENNEY,
CLERK.

214

THE

Supreme Court of the United States.

APRIL TERM, 1895.

Motion.

And now comes the attorney of record in the cause of George E. Kirk, Appellant, *versus* The United States, Appellee, No. 214, on the appeal allowed in the U. S. Court of Claims on January 14th, 1893, and moves this honorable court that an order issue from this court to said Court of Claims, calling for all the "interlocutory orders" made by said court below in said cause, "necessary to a proper review of the case," under section of Rule 1, of the Rules of the United States Supreme Court, in relation to Appeals taken from the Court of Claims to this Honorable Court.

The said "interlocutory orders" and responses thereto are as follows: Order of Court of Claims, dated February 28th, 1891, upon the U. S. Commissioner of Patents, and Letters of Response thereto, dated March 6th, 1891; Order of January 16th, 1892, upon the U. S. Postmaster General, and Letter of Response thereto, dated January 21st, 1892; Order of December 2d, 1891, upon the U. S. Postmaster General, and Letters of Response thereto, dated December 5th and 7th, 1891; Order of March 18th, 1892, upon the U. S. Postmaster General, and Response thereto, dated March 22d, 1892.

Respectfully submitted,

R. H. STEELE,
Att'y for Appellant.

October 28th, 1895.

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. ~~891~~ 214

GEORGE E. KIRK, APPELLANT,

vs.

THE UNITED STATES.

Appeal from the Court of Claims.

MOTION TO ADVANCE.

Now comes George E. Kirk, appellant, and moves the Court to advance the above-entitled cause for argument at the present term, to be heard with or immediately following case, Term No. 13, John J. Schillinger *et al. vs.* The United States; and therefor assigns the following reasons:

This case (No. 891) is a suit brought by George E. Kirk, as assignee of one Samuel Strong, against the United States, for the use of an invention in street letter boxes. There were several defences. (Transcript, p. 26.)

Independently of these enumerated defences, the Court of Claims decided the case upon the ground that the use of the letter box did not imply a contract to pay therefor. The case is decided expressly upon the authority of the above case of Schillinger, now No. 13 of this term. The Court of Claims says (Tr., pp. 35, 36):

> "To entitle the claimant to recover he must show some privity between the defendants, through the Postmaster General, who was authorized to contract in respect thereto, and the claimant or his assignor, from which the court can conclude as matter of law that an implied contract exists. And in this connection we remark that the averments in the petition stated, looking to that end, are not supported by the facts found. On the contrary,

it appears that the only knowledge the Postmaster General had, as to Strong's claim on the box used, is disclosed in his letter to the Commissioner of Patents, set out above, and it was because of the knowledge he then had of Strong's claim, by the caveats, that he objected to the granting of a patent to him, giving as his reasons that Strong was not the inventor of the box, but that the same was the creation of the Post Office Department, brought about by reason of the recommendation of the postal convention recited in said letter; that Strong had reduced the box to shape and form as recommended, carrying out the suggestions of the Postmaster General as provided in his contract; and that the box so shaped and formed had then been in use in the Department for four years. The facts show that the box used was under claim of ownership by the Department, there being no acknowledgment by the Postmaster General, even tacitly, that Strong was the inventor, but, on the contrary, his claim was denied. The use of such box, thereafter, by the Department, would not imply a contract to pay therefor, and without a contract, under existing authorities, there can be no recovery. Schillinger's case (24 C. Cls., R., 278)."

This language is quoted to show the facts from which the Court drew its conclusions; and discloses the difference in the circumstances between this case and the Schillinger case.

The decision is plainly put upon the reasoning and authority of the Schillinger case. The main question involved in each case is the same, viz: The construction of the statutes giving jurisdiction to the Court of Claims in claims against the Government for the use of an invention where there is no express contract. And although, of course, the particulars of these cases are somewhat different, yet the Court of Claims, in arriving at its decisions, made application of the same tests and propositions.

For this and the other reason—that this is a matter of general importance—counsel for appellant asks leave to submit this motion.

Robert A. Howard

Attorney for Appellant

Office Supreme Court U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE E. KIRK, *Appellant*,

v.

THE UNITED STATES.

No. 214.

APPEAL FROM THE COURT OF CLAIMS.

Brief in Behalf of Appellant.

R. H. STEELE,
Counsel for Appellant.

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For this and the other reason—that this is a matter of general importance—counsel for appellant asks leave to submit this motion.

Robert H. Marvel

Attorney for Appellant

Office Supreme Court U. S.
FILED.
APR 6 1896
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE E. KIRK, *Appellant*,

v.

THE UNITED STATES.

No. 214.

APPEAL FROM THE COURT OF CLAIMS.

Brief in Behalf of Appellant.

R. H. STEELE,
Counsel for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE E. KIRK, *Appellant*,
v.
THE UNITED STATES.
No. 214.

APPEAL FROM THE COURT OF CLAIMS.

Brief in Behalf of Appellant.

STATEMENT OF APPELLANT TO THE UNITED STATES SUPREME COURT, IN THE CAUSE OF GEORGE E. KIRK V. UNITED STATES, ON APPEAL FROM DECISION OF UNITED STATES COURT OF CLAIMS DISMISSING PETITION IN SAID CAUSE, NO. 14485, AFTER DUE HEARING THEREON.

I.

The appeal of the above named appellant in aforesaid cause from said court below, hereinafter showeth:

1. The appellant herein is assignee of the entire interest, property, and rights of action in and to

certain improvements in so called 'street letter boxes,' by a certain Samuel Strong, inventor of said improvements upon inventions for which certain letters-patent were issued to him, as hereinafter stated; and said Strong is the assignor of said interest, property, and choses in action to said claimant—now appellant—, by instrument of assignment dated January 26th, 1881, and recorded in Liber F. 26, page 226, of Transfers of Patents in the United States Patent Office, a copy of which is on pages 4 and 5 of the printed transcript of record, herewith.

2. The said assignment transfers to said assignee the entire and exclusive rights and interests secured to said assignor by said letters-patent, together with all rights of action as included therein: and said letters-patent were issued as aforesaid, on March 30th, 1869, numbered 88528; on August 31st, 1869, numbered 94449; on February 7th, 1882, numbered 253236; and, on *October 27th*, 1891, *numbered* 462-224; said last cited patent being founded on the 'improved invention' specified in the 'application' filed by said Strong on March 9th, 1874, and upon which arose the *lengthy and continuous contest* between said applicant—afterwards his assignee—and the defendant and appellee in this cause; first, in said Patent Office, and next, in said action by the claimant in the court below.

3. Said Samuel Strong, being the sole owner and proprietor of the inventions covered by the *first two* of the aforesaid letters-patent, entered into a certain express contract with the United States of America, by the Postmaster General thereof, dated September

15th, 1869, for the purpose of supplying said defendant with as many of the specific letter-boxes of the said inventions, as the Postmaster General might require: a copy of which contract is on page 5 of said printed transcript, herewith.

4. In the month of January, 1870, a so-called "Postal Convention" assembled at Washington, D. C., by order of the Postmaster General, "to consult and report in regard to the general good of the postal service;" and said convention reported on January 15th, 1870, among other things, to the Postmaster General, certain 'recommendations and suggestions,' relating to a street letter-box upon which said convention had decided, 'based on their own experience:' a copy of which report is on page 29 of the aforesaid printed transcript, herewith.

5. Soon after the above recommendatory report had been made and received, the Postmaster General and said Samuel Strong executed a certain other *substitutive and final contract, on February 18th* 1870, for the purpose of "ordering, purchasing, and using on the part of said United States, the letter-boxes made according to the '*models*' deposited in the Post Office Department at Washington, and marked with designative letters thereon:' a copy of which contract is on page 8 of said transcript, herewith.

6. In accordance with the *second clause* of the *fourth section* of said 'express contract,' a certain 'sub-contract' was executed, on March 9th, 1870; by and between said Samuel Strong and the 'Peeks-

kill Plow Works,' for the purpose of dividing the obligations named in said 'express contract,' namely, "to 'model,' manufacture and furnish' said letter-boxes, &c.; so that, while said Strong should "model," &c.: the said 'Works' should "manufacture and furnish," &c.: the certified copy of *which* '*sub-contract*' was before the court below at the hearing of said cause, but *has been withheld* from said 'transcript; which fact is noted in the 'statement of error' hereinafter made, in the 3d clause of section 6 of Part II, herewith.

7. Within one month after the termination of said 'express contract'—and its equally material portion in said 'sub-contract'—, said Strong completed and 'filed' in the United States Patent Office *the* '*application*' of March 9th, 1874, *upon the invention* for which the aforesaid letters patent, No. 462-224, were issued on October 27th, 1891: and furthermore, *the said last invention* is, not only *the one which arose from the* '*experimental use*' of the *subject* of said '*express contract*,' but is, also, the '*improved invention*' by said Strong, '*secured*' by said letters-patent, and the '*subject*' of the aforesaid action in the court below, and of the appeal therefrom to this court.

8. In pursuance of the stipulations of said 'express contract,' the Postmaster General, during the whole term thereof, *paid to said Samuel Strong* the sum of $3.50 on each and every letter box, which he had furnished—through said 'sub contract'—to the Department for *use* in the public mail service: the above-named sum being the *average difference*

between the *prices named* in the main contract, and the *prices paid to said 'Plow Works'* under the 'sub-contract.'

9. The said Appellee—through its Executive—, "during the *intermediate period* between the aforesaid 'application' and issue of patent theron,' namely, *between March 9th*, 1874, *and October 27th*, 1891, — a period of *over seventeen years*—, 'has *caused to be made*, and has *constantly and continuously used*, and has *ordered and purchased of others so as to use*, the street letter-box of substantially *the invention of said letters-patent*, No. 462224; which patent is now entirely owned by said Appellant and claimant, and has been owned by him ever since the date of the issue thereof to him by the Executive of the Appellee, by virtue of the aforesaid assignment, executed on January 26th, 1881: copies of which patent and assignment are on pages 4 and 25, respectively, of said printed transcript, herewith.

10. In accordance, therefore, with the statutes of the United States made in pursuance of 'special provision' of the 'Constitution' thereof, as hereinafter stated, the said Appellee, through its executive, and also under both an '*express* and an *implied contract*' in the premises, has owed and is still owing said Appellant and claimant a "*just compensation*' for the '*exclusive use*' of said '*invention as private property*,' during said 'intermediate period,' namely, 'September, 1874, to December 5, 1891': said time being *officially certified from the executive records* in the Post Office Department, namely, in '*official responses*' to certain '*inter-*

locutory orders' of said court below: copies of which 'orders' and 'responses' thereto have been also *withheld* by said court from said 'transcript of record,' notwithstanding said 'responses' were *officially written* and sent to said court, so as to be used by the court at the hearing of this cause, as 'direct evidence of the *admissions* of the executive of the Defendant in the premises;' which *facts* are noted in the 'statement of errors' hereinafter made, in Section 11 of Part II, herein.

II.

The errors made by the court below, both in the "findings of fact" and "conclusions of law" thereon, are briefly stated and considered as follows:

1. In relation to the "*first finding*," the court erred in not taking into consideration the *explicit terms of the assignment*—found on page 4 of said printed transcript—executed by said Samuel Strong in favor of said claimant—as heretofore stated in Section 1 of Part I, herein—and thereby made the foundation of his legal status before said court, as stated in his "petition" thereto, and essentially quoted as follows:

> "I do hereby assign unto the said George E. Kirk all the right, title and interest which I have in all of said *inventions*, together with *all royalties or other dues* heretofore *uncollected*, or that shall be *collected hereafter*, in any legal manner, *from any unlawful manufacturer or user* of said patents * * * and also in *all improvements* heretofore made by me, as set forth

in the *specifications prepared, executed and filed* preparatory to obtaining of letters-patent therefor"—

The one of said specifications especially in point in the premises being that of "*the application*" *of said Strong, filed* in the Patent Office *on* "*March 9th*, 1874," and upon which *letters-patent No.* 462,-224 *were issued on October 27th*, 1891: all of which was fully shown to said court below at trial.

In connection with the above, see claimant's "request for findings," numbered 1 and 2, on page 57 of the printed record in this cause in said court below, herewith.

2. In relation to the '*second finding*,' the court erred in *not stating in full* all of the said patents issued to said Strong, assignor, and to said assignee George E. Kirk, in their *regular order of dates and numbers*, as hereinbefore stated, so that proper and just *comparison and discrimination* could be readily and precisely made between *the two assignees of record* in the premises, and *justly legal conclusions* drawn therefrom; and to thereby also show the *fact* and the *law* applicable thereto, namely, that all the available rights which inured to the *prior* assignee, Gideon L. Wal[illegible]—as stated in the assignment quoted in the '*fourth finding*' of the court—was practically re[illegible]d ineffective, if not impliedly 'abandoned,' when said *contract of September 15th*, 1869—as stated in said '*third finding*' of court—was superseded and annuled by said "substitutive and final contract" of *February 18th*, 1870,—as stated in the '*sixth finding*' of the court.

It should be also noted, that all rights in and to 'the invention described in the specification of (probably) the 'application' filed *September 4th*, 1869,' —mention of which date is *solely* found in said assignment by Strong to Kirk—, *lapsed* in a similar way to those inuring through the *first two* of the aforesaid patents issued to said Strong, namely, numbering 88528 and 94449, respectively.

3. In relation to the '*third finding*,' the court erred in *not also finding* that said *contract* of *September 15th*, 1869, was entirely *superseded and annulled* by said '*substitutive contract of February 18th*, 1870;' thereby coupling sequentially the *fact* and *conclusion of law*, as the concomitant of said fact, namely, that "when the *subjects* of said contract of September 15th, 1869, were superseded, as aforesaid, by the *subjects* of the contract of February 18th, 1870, all the subsidiary subjects of said former contract *lapsed therewith*."

In this connection see 'Request for Findings' 5 and 9, on pages 59 and 61 of said 'printed record of case.'

4. In relation to the '*fourth finding*,' the court erred, in addition to the errors aforestated, in *not finding* the directly sequential fact, both of incident and of law, namely, that *the* '*inventions*' which were *the subjects* of the patents and of the application *in the assignment to said prior assignee*, were *not* in any way *identical with or similar to the later and* '*improved inventions*,' which were *the subjects of said* '*substitutive contract;*' and, later still, identical with or similar to the '*improvements*,' which were

the *direct results* coming from the '*experimental use*' of the subjects of said 'final contract;' and which, *finally*, resulted in *the* '*invention*' which is specified and 'claimed' in the '*application*' for the *said patent No.* 462224; over seventeen years afterwards granted and issued thereon by the very Executive of the Appellee in this cause.

In connection with the above, see 'request for findings,' numbered 8 and 13, on pages 61 and 65, respectively, of said 'printed record of case.

5. In relation to the '*fifth finding*,' the court erred, in *not confining said* '*finding*' *to the facts of record*,' namely, the *simple statement* of the 'recommendations and suggestions' of said 'Postal Convention,' *as expressed in the report itself*, taken from the authenticated copy thereof used by the court at the hearing, and correctly quoted by the court in the last paragraph of the 'finding,' and also on page 29 of said printed 'transcript'; instead of which limitation of said 'finding,' the court has *substituted therefor* 'conclusions of opinion' unsupported by any 'material fact' in the *direct* 'evidence of record' placed as aforesaid before the court; and also, makes use of certain words and expressions, which, not only have a tendency to mislead, but, in fact, have a *meaning directly contradictory* to those authoritatively defined, as expressly applicable to all nomenclatures pertaining to the 'patent system of law.'

For instance, essentially quoting the '*fifth finding*,' in relation to said 'conclusions' upon *immaterial facts* and the use of *inapplicable words*, namely, "and said postmaster and other officials met in

convention * * *, and, *endeavoring to avoid conflict* with any existing patent, '*devised*' a street letter-box, *based on their own experience*," &c., the following 'conclusions of fact,' in view of the context, are obviously deducible: 1. That said 'Postal Convention,' consisting of several 'postal officials,' who evidently knew nothing of said patent system, *and therefore*, "endeavoring to avoid conflict with any existing patent," set their heads together to '*devise*'—that is, '*contrive*'—such a street letter-box as should not—and certainly did not—*contain any 'patentable feature:'* 2. That, sequentially, the said Strong, in order to meet the requirements of said 'substitutive contract,' *must*, as a necessarily preliminary proceeding, *have prepared a 'model,'* which he "deposited in the Post-Office Department"—declared as a fact in said contract—, either before or at the time of the execution thereof: 3. That, also sequentially, the said '*model*,' named as such as aforestated, must be considered as *the 'archetype'* of certain essential features pertaining to '*invention*.'

6. In relation to the "sixth finding" the court erred.

First, in using the word "*devised*"—found here and elsewhere herein—, inasmuch as the meaning pertaining to this word—which is technically used in the 'patent law'—, is alike applicable to the words 'device,' 'model,', &c., denoting the "process of thought known as invention:" *Second*, the court erred in *stating as a 'fact,'* what was only *assumed* as a 'fact,' namely—essentially quoting pertinent

portions of said 'finding'—, "That pursuant to the 'recommendation' so made, * * * a street letter- box was '*devised*' and adopted, known as the '*Round-top;*' and the said Samuel Strong was '*engaged*' to '*model*,' manufacture and furnish," &c.; which language is *contradictory* to the statement by the court in said '*fifth finding*' that "The '*postal convention*' had '*devised*' said box;" and also, *contradictory* to the '*fact*,' that said box, "known as the '*Round-top*,'" had been *already* '*devised*' by said Strong, and that the *patent No.* 94449, issued to him on August 31st, 1869, *had said* '*round top*' *as one of its elemental features*: *Third*, in relation to the *last clause* of the *second paragraph* of this "*finding*" the court also erred in *entirely omitting* certain important and material *facts of record*, namely, in the said "*sub-contract*" made to form a material part of said "express contract," executed on March 9th, 1870, by and between said Strong and the Peekskill Plow Works, as hereinbefore stated in section 6 of Part I, by which it was fully shown *that said Strong was paid the sum of* $3.50 *for each of said boxes*, "so 'modeled,' manufactured and furnished," *instead of* the sums of $7.50 and $5.50 to be paid respectively as stated by the court in said "finding."

In this connection, see 'request for finding' numbered 9, on page 61 of said 'printed record,' herewith.

7. In relation to the 'seventh finding' the court erred in *omitting to find the fact of record*, namely, that there had been raised a *lengthy and determined contest* in the Patent Office—covering a period of *over*

seventeen years—, by a certain 'letter of protest'—quoted in the '*eighth finding*' by the court—, written by the Postmaster General 'Marshal' to the Commissioner of Patents, on July 29th, 1874, concerning the '*application*' upon the very '*invention*' described and 'claimed' therein, filed on 'March 9th, 1874,' and *upon which said patent*, No. 462224, *was issued* on October 27th, 1891—, about seven months before the said hearing of this cause was had by the court below, to said assignee, George E. Kirk, now appellant before this court.

In connection with the above, see 'request for findings,' numbered 13, on page 65 of said 'printed record,' herewith; together with certified copy of said 'printed record' marked 'Exhibit K,' herewith. Again, in relation to the words, '*suggested*'—used in said '*fifth finding*'—; '*suggest*'—used in *second* clause of section *first* of the said 'express contract'—; and, the strongly contrasting word '*instructions*'—used in said 'sixth finding'—; see the decisions of this Supreme Court in relation to the expression, '*suggestions*, obtained from any source,' &c., in O'Reily v. Morse, 15 How., 62; Aggawan Co. v. Jordan, 7 Wall., 685; and, Hargood v. Hewitt, 119 U. S. 226. Again, in relation to the '*tentative nature*' of said 'express contract,' and in answer to the statement made by the court in the last five lines of said '*seventh finding*,' "that the said boxes so 'modeled,' manufactured and furnished by said Strong were in '*public use*' * * * *for more than two years prior* to the 9th of March, 1874,' &c., see decisions of this court upon 'experimental use' in Shaw v. Cooper, 7 Peters, 102: Elizabith v. N. Pave. Co., 97 U. S., 126; Parker v. Booth,

102 U. S., 96; Pitts v. Hall, 2 Blatch., 229; and Campbell v. James, 17 Blatch., 42.

8. In relation to the '*eighth finding*,' the court erred in *taking it for granted as a* '*fact*,' that the statements of the Postmaster General 'Marshall,' in his '*letter of protest*' to the Commissioner of Patents—quoted in this 'finding,' and again in the 'opinion' of the court—, were in strict accordance with the 'facts of record;' which, as they were presented to the court below at said hearing, appeared to be in the nature of '*express admissions*' on the part of the Defendant, namely:

1. Through the Postmaster General, in '*letters of response*'—dated May 4th, 1885, and December 5th and 7th, 1891,—, to the '*interlocutory orders*' of the court—dated April 10th, 1885, and December 2d, 1891, respectively—; which '*official responses*' *acknowledged the following material facts*, 'taken from the records of this office,'' essentially quoted as follows: ''there have been ordered for the use of the free delivery postoffices, from September, 1874, up to this date (Dec. 5th, 1891), 40529 street letter-boxes''; also, ''known as the 'Strong box, * * * '', &c.; and also, that ''No. boxes of the style and pattern referred to are *now* (Dec. 5th, 1891,) manufactured for the Government:'' 2. *Acknowledgements*, as aforesaid, through the Commissioner of Patents, by the *grant and issue of said letters patent, No.* 462224, substantially as follows: That the said Defendant is the '*grantor*' of the 'protection of the law' over the 'exclusive right' to the 'discovery and invention' contained in the 'letters-patent,' and been made '*a party*' to said '*contract of*

patent,' by and between said '*grantor*' *and* '*grantee*'; also, that said Defendant, through the legal procedure of 'examination and decision' upon the '*contract of application*' of March 9th, 1874, by its Executive, has been made '*a party*' to said contract *prior* to said '*contract of patent*' thereon; also, that said *Defendant*—also through said Executive, —, has been made a '*party of the one part*' to said 'express contract of February 18th, 1870, in which the aforesaid *assignor and patentee* was made '*party of the other part*'; also, that *said* '*parties*' to said 'express contract' had the *same stipulated interests and obligations*, in relation to the *subject* of said 'express contract,' that they have *now* in relation to the '*invention*' embraced by the '*claims*' of the aforesaid letters-patent; and finally, that the '*parties*' to said 'express contract' and to said 'letters-patent,' being the *very same parties to both said contracts* upon the *same subjects of contract*, are completely *estopped* from *denying or avoiding any of their acts*, which concluded *express or implied obligations* within or resulting from said contracts between the parties.

In connection with the above, see the copy of said letters patent No. 462224, on pages 25 and 26 of the 'printed transcript' herewith; and also, said 'letters of response, on pages 12, 88, and 89, of said 'printed record of the case.'

9. In relation to the 'ninth finding, the court erred in *not stating* the inevitable '*conclusion of law*' upon the absolute '*fact of record*,' namely, that the intimately connected rights and interests of said *prior assignee of record*, Gideon L. Walker, to and with

the 'inventions' which were the 'subjects' of *the patents*, No. 88528 and 94449; and of said '*express contract*' of September 15th, 1869; each and all of which *lapsed into nothingness*, when the above stated contract'—together with all prior contracts—was *superseded*, under express stipulation to that effect, by said 'substitutive and tentative contract' of February 18th, 1870.

In this connection, see the *second paragraph* of the *first section*, the *fifth section*, and the *first paragraph* of the *sixth section* of said contract of September 15th, 1869; and, the *third* and *fourth sections* of said contract of February 18th, 1870; to be found on pages 6, 7, and 10, respectively, of said 'printed transcript herewith. Also, see sections 2, 3, 4, and 6, of the 'statement of errors,' herein.

10. In relation to the '*tenth finding*,' the court erred in its *statement of immaterial matter*, which, in absence of *proper* explanation, might mislead to false conclusions of law, namely, "but it does not appear that the claimant has any interest therein" —that is, in letters-patent, No. 252236, which were *issued* to said Kirk on *assignment* made *after* 'allowance' thereof, and simply accompanied the other certified assignment before the court.

11. In relation to the '*eleventh finding*,' the court erred *in finding as a fact the very opposite of what appears upon the faces of the aforesaid 'tentative contract' and 'patent No.* 462224.'

A brief statement of the '*facts*,' in relation to the above 'finding'—quoting the words of the 'finding, "that the letters-patent, No. 462224, covers the

same and identical street letter-box adopted by the Postmaster General, *known as the* '*round-top*,' and which was '*modeled*' *and manufactured* by said Strong *as hereinbefore set forth*''—, is as follows: 1. The letter box, known as the 'round-top,' was first '*claimed by and patented to* said Samuel Strong on August 31st, 1869, numbered 94449, as shown on page 13 of said 'transcript': 2. The letter-box, having an 'arched top,' *first* 'modeled' and 'deposited' by said Strong under said 'tentative contract,' was "used only a short time during the *first year*," 1870, of the contract; it being superseded *several times* by other models, made and deposited during the term of the contract, as shown by said 'Exhibit K,' *certified* to the court below and herewith accompanying: 3. That said 'improvements' made from time to time during said term of contract, embraced in the 'claims' of said letters-patent, No. 462224, and were also the *foundation of the suit* in the court below, namely, for "just compensation for the 'exclusive use' of said 'private property,' under an 'implied contract,' *founded directly upon* said 'express and tentative contract': 4. The said 'implied contract' *began* contemporaneously with *the execution of the first contract* "with others, at divers times"—quoting from the '*twelfth finding*,' on page 33 of said 'printed transcript'—, namely, with the "Union Foundry and Manufacturing Company of Reading, Pa., on July 28th, 1874,"—taken from the authoritatively certified copy of said contract before the court—; and *ended* with the *cessation of said use*, on December 5th, 1891, as stated in the 'letter of response' of that date to the 'interlocutory order' of the court on December 2d, 1891.

12. In relation to the '*twelfth finding*,' the court erred in its *statement as a 'fact'*: "That from the *27th of October*, 1878, being six years prior to the time of filing the *last amended petition* herein, *January 15th*, 1892, there were *purchased* by the Postmaster General *for use* by the Post Office Department about 35000 of said letter-boxes," &c. In this statement and 'finding' the court erred, for the following reasons founded on the 'facts of record,' mostly taken and certified from 'official sources,' namely: 1. That said 'implied contract' of license to the Department and Appellee *began*, when the letter-boxes were purchased "of others, at divers times," of the "same and identical kind theretofore 'modeled,' manufactured and furnished by said Strong;" and, "were *caused* to be made, and *constantly and continuously used*, from September, 1874, up to December 5th, 1892," as *admitted and acknowledged* by the Executive in his 'official response,' to the 'interlocutory orders' of the court, as herein before stated and shown: 2. That in accordance with said '*acknowledgments*,' in relation to the period of *duration of said 'implied contract'*; the *number of letter-boxes purchased and used* during said period; and, the '*fixed rate per box* paid during said 'express contract—upon which said 'implied contract' is directly founded—, make the 'conclusion of fact and law' inevitable, that, instead of the "number of letter-boxes purchased being only *about* 35000," the correct number is "officially stated" to be 40529 letter-boxes, and the said '*fixed rate*,' "*paid for the use of the invention*" is $3.50 per box: 3. That the *granting and issue* of said patent, No. 462224, *by said Executive of the said Defendant, af-*

ter said lengthy and persistent contest over said 'application' for said letters-patent, is a conclusive 'estopel' upon said Executive—the 'natural' Defendant and Appellee before this court—, from denying the said full and 'just' compensation in the premises: 4. That in accordance with said 'facts of record,' herewith, the period of said '*implied contract*' was wholly *contemporaneous* with the period of said '*contract of application*,' and, therefore, wholly mutual and legal correlations were initiated, established, and concluded between said contracting parties, during the whole time of said contemporaneous period; and, consequently, that, the said *assignor*, Samuel Strong, having wholly fulfilled all the requirements of 'law of contracts' in the premises, the said Executive should also fulfill all said obligations to which *he*, as said Executive, *pledged* said Defendant and Appellee as '*a party*.' 5. In relation to the '*statute of limitation*,' substantially cited by the court below, in justification of practically *abridging* the amount of *said* '*just compensation*,' the rightful 'conclusion of law' in the premises is, that the said limiting portion of the statute does not apply to this case before the court, involving, as it does, the '*exclusive right of an* '*inventor*, 'secured' from any such invasion by an especial 'provision' to that effect in our National Constitution; which question of law is briefly stated and considered in Part III, herein.

13. In relation to the 'thirteenth finding' the court erred in expressing an '*opinion*' instead *of* stating a '*fact*,' namely, that the aforesaid 'express and sub-contract,' taken together as thus complete,

established, as aforesaid, not only the *number* of letter-boxes *purchased and used* during said '*implied contract*,' but also, the '*fixed rate of royalty*' to be paid for the '*use of the invention*,' during the *same period of time*.

In connection with the above, see 'request for findings' 5 and 9, on pages 60 and 61, respectively, of said 'printed record.'

In conclusion of the consideration of the aforesaid 'findings' of court, the following 'expression of opinion' by the late Associate Justice Clifford is deemed pertinent, namely: "While courts of justice may alter the names of things they cannot change the things themselves, without exercising positive invention; nor can they obliterate the relation between cause and effect, for the reason that the law which regulates that relation is irrepealable." (Sewall v. Jones, 91 U. S., 171.)

14. In relation to the '*conclusion of law*,' made by the court "upon the foregoing 'findings of fact,' the court erred as follows: *First*, in the taking 'statements of opinion,' such as those made by Postmaster General ('Marshall') in his said letter of protest' to the Commissioner of Patents, for 'facts,' to which the said system of Patent Law is applicable, and upon which the almost numberless decisions of courts have been made, in relation to 'principles' which form the foundation of this 'metaphysical branch of the law': *Second*, in 'concluding' that *technical words and expressions* applicable only to this peculiar "system or process of thought," by which "ideas are made to take practical and useful forms," have just the *same meaning* as though

applied in ordinary ways and to usual conditions. For instance, the court states, in its 'seventh finding,' as a matter of 'fact,' that the said Strong 'claimed' to be the 'inventor' of the cast-iron street letter-box so '*devised*' and adopted by the Postmaster General * * * ; and which letter-box so '*devised* and adopted * * * was '*modeled*' * * * under the '*instructions*' of said Postmaster General," &c. ; and, as the very climax of indiscriminate nomenclature, the court, in its '*opinion*'—as 'reason' for its '*judgment*' in the premises—, uses this language, namely, "Strong was not the '*inventor*' of the box, but that the same was the 'creation' of the Post Office Department," &c. ; all of which conclusively shows great misconstruction of the technical meaning, in the sense of 'patent law and practice,' of said words, 'invention,' 'model,' 'devised,' 'creation,' and suggestions' in contradistinction to 'instructions,' as used by the court below: *Third.* Also, in relation to said 'statute of limitation,' cited by the court in the last clause of its 'opinion,' the same 'conclusion of law' applies which is stated in the *fifth* paragraph of the *twelfth* section of the 'statements of error,' herein, namely ; that, as the said '*claim*' is founded upon the 'provision' of the Constitution relating to 'exclusive right of inventor,' owning said right by title of '*creation*' and not by force of law, the Congress has no power to limit said 'exclusive right' in any way—except the one that is stated in said provision itself : especially is this the case at bar of court, the '*claim*' in the premises having been *constantly* '*accruing*,' and can only be said to have '*accrued*' when the said '*use*' of the invention in question, ceased, or said 'implied contract' terminated. The sole bar to rem-

edy 'at law or in equity, under the law in force since March 3d, 1887 (24 S. at L., 505.), relative to suits in the 'Court of Claims,' would be in case of 'laches,' by claimant not bringing his action "within six years *after* claim had '*accrued;*' and, as said 'implied contract' *had not ceased to run* until December 5th, 1891, *over seven years after* claimant had *filed* in court his 'original petition' in the present cause, there could not be 'laches.' This statement of fact and law also answers the question of '*privity*,' raised in the 'opinion' of the court: *Fourth.* In order to definitely settle the question of the '*subject*' of said contract of February 18th, 1870, being an '*invention*,' and that said contract was considered by its signers as a 'tentative' one, see the *deposition of Postmaster* General 'Creswell'—a printed copy of which is on pages 90 and 91 of said 'Exhibit K,' herewith—, in which he says under oath and in answer to questions as follows: "We dealt with Mr. Strong as the *owner and inventor* of that letter-box—at least, I did. I said *we*, meaning the Department." Also, "We bought and contracted for the '*use*' of that number of boxes, *for the term of the contract:* and *the ownership* of that number of boxes. Of course *they became the property* of the Department. The *Department paid for them.*" This evidence, together with the *certified text* of the integral parts of said 'express contract,' and the *identical model* of said 'application of March 9th, 1874,' were duly tendered to and received by the court below at the said hearing of the cause.

In conclusion of all of the above 'statements of error, see also, claimant's 'request for findings,' numbering from 1 to 13 inclusive, on pages 57 to 66, respectively.

III.

Having made, as above and under the rules, the 'statement of the case,' together with the 'specification of the errors relied upon,' in the premises; it becomes next in order to make also, "statement of the points of law and facts to be discussed, with reference to the pages of the record and the authorities relied upon in support of each point," as follows:

This suit was brought in the court below, under the laws of the United States made in 'pursuance' of the Constitution thereof, stated in ¶ 8, of section 8, of its Article I, namely: "The Congress shall have power * * *, to promote the progress of science and useful arts, by *securing* for limited times to * * * *inventors* the *exclusive right* to their respective * * * *discoveries*": and in the last two clauses of Article V of Amendments to the Constitution, namely, "Nor shall any person be *deprived* of life, liberty, or *property* without *due process of law;* nor shall any *private property* be taken for *public use* without *just compensation.*"

A concise abstract of the principal points of both fact and law, placed and discussed before the court below, and also to be considered under rule of this honorable court, are hereby respectfully presented as follows:

1. The 'mutual status' of parties in controversy at bar of court?

2. 'Property' *per se* in 'invention' '*created*' by inventor?

3. 'Experimental use' of an invention under stipulations of 'express contract'?

4. 'Exclusive use' under 'implied contract' of an 'improved invention' resulting from and during said 'experimental use'?

5. 'Exclusive use' of said invention by the Defendant under said 'implied contract,' during the period between the 'application *to* and issue of the patent *by* said 'exclusive user'?

6. 'Exclusive use' by said Defendant under an 'implied contract' dependent upon 'express contract and its sub-contract,' whereby the 'standard of royalty' was established between the contracting parties *by said user*'?

First. In relation to the *mutual status*, or the correlative conditions or positions in which the two contestants legally stand, both to each other and to this honorable court, appears to be the proper preliminary question to define and settle, before the other questions of law, in the order above stated, can be confidently or satisfactorily discussed and decided.

This first question points primarily to 'jurisdiction,' which, while it was promptly assumed by the court below, and without question by either party before the court, yet the 'fact' was soon developed in the controversy then begun, that the legal status of the *real and natural party defendant*, namely, the 'Chief Executive of the Nation'—the '*artificial party Defendant*' in this cause—was not fully apprehended or considered.

As, oftentimes, nothing leads controversy into a labyrinth of inextricable confusion, more than the want of mutually rightful understanding of our 'Constitutional' terms and expressions—so often inadvertantly or carelessly expressed—, let us see whether or not said "United States of America," "Government of the United States," and "President—or 'Executive'—of the United States," are *interchangeable terms*. This honorable court, as the "one Supreme Court of the Nation, entitled the "United States of America," unanimously and unalterably defined and decided, over a century ago, what these terms respectively meant, as follows: "Whosoever considers in a combined and comprehensive view, the *general texture* of the Constitution, will be satisfied that '*the people* of the United States' intended to form *themselves* into a 'Nation' for *national purposes*. They instituted for such purposes a *national government* complete in all its parts, with *powers* Legislative, Executive, and Judiciary; and *all these powers extending over the whole nation*. * * * Princes have *personal* powers, dignities, and preeminences, *our rulers* have none but *official*, nor do they partake in the 'sovereignty' otherwise, nor in any other capacity, than as *private citizens*. * * * The 'articles of confederation,' it is well known, did not operate upon *individual citizens*. * * * The same section of Constitution which extends the judicial power to the "controversies between a State and citizens of another State," does also extend that power to "controversies to which the *United States shall be a party*." Now it may be said, if the word *party* comprehends both Plaintiff *and* Defendant, it fol-

lows, that the '*United States*' *may be sued by any citizen*, between whom and them there may be a 'controversy.' * * * In all cases of action against the State of individual citizens, the National Courts are supported in all their legal and Constitutional proceedings and judgments, by the arm of the Executive power of the United States; but *in cases of actions against the United States*, there is *no power which the Courts can call to their aid.*" Then the Chief Justice Jay concludes the '*expressions of opinion*' of court, in which he seemingly speaks with all the inspiration of prophesy, as follows: "I wish the *state of society* was so far improved, and the *science of Government* advanced to such a degree of perfection, that '*the whole nation*,' in the peaceful course of law, *could be compelled to do justice*, and be sued by individual citizens:" Chisholm v. State of Georgia, 2 Dallas, 419 (1793).

On February 24th, 1855, the above quoted *desire* was seemingly fulfilled; as on that date the Congress 'ordained and established' the National Court, entitled the 'United States Court of Claims,' with the jurisdiction essentially quoted as follows: "The Court of Claims shall have jurisdiction to hear and determine * * * : all claims founded on the *Constitution of the United States*, or upon *any law of Congress*, or upon any regulation of an Executive Department, or upon *any contract* express or implied *with the Government of the United States*," * * * (Sec. 1059, R. S. U. S., and Act of March 3d, 1887, 24 S. at L., 505.) This cause, therefore, came to this Supreme Court, on appeal from said Court of Claims, for 'just compensation,' founded upon the 'Constitution of the United States' and the 'laws of

Congress made in *pursuance* thereof,' and also 'upon an *implied contract* with the *United States*,' for '*public use of private property*,' in the nature of an 'invention' the '*exclusive right*' to which was '*created*' by its inventor, and is now '*exclusively*' *owned* by the said Appellant in said cause before this honorable court.

Hence, this cause is one of *implied contract of license to the Defendant* which is the direct sequence, in fact and law, of an '*express contract*,' made by and between said Defendant, through its Executive, February 18th, 1870, and said Samuel Strong, assignor to said Claimant by virtue of a deed of assignment executed on February 26th, 1881; a printed copy of which is on pages 4 and 5 of said 'transcript,' herewith.

In support of said claim under said assignment, see the following authorities cited and quoted, namely: "Assignment of the claim for the past damages and profits was in conection with and an incident to the transfer of the title to the letters-patent. Such an assignment * * * court will uphold:" (Henry v. Stone Co., 2 Ban. & Ard., 224.)

"Patents may be granted and issued or reissued to the assignee of the inventor or discoverer:" (Sec. 4885, R. S. U. S.)

It is well settled that a recorded assignment of a perfect invention made before a patent was issued, carries with it the patent when issued:" Littlefield v. Perry, 21 Wall., 225.)

"Assignment in writing is a contract, and should be construed in accordance with the intention of the parties:" (A. N. Pavement Co. v. Jenkins, 14 Wall., 452.)

"It is a great mistake to suppose that the assignment of a patent carries with it the right to damages, for an infringement committed *before* such assigment." (Moore v. Marsh, 7 Wall., 515.)

"But, where the deeds of assignment contain the words, "also any and all claims which I now have or may have, against any person or persons by reason of any infringement of said patent, or any part thereof, the case will be considered as if patentee and his partners (assignors) were plaintiffs :" (Meriman v. Smith, 11 Fed. Reps. 588.)

"Assignments can divide patent rights only in point of locality :" (Goodyear v. R. R. Co., 1 Fisher, 636.)

"*Bona fide* purchasers without notice can hold as against *prior* assignees of all *improvements* whether *recorded or not* :" Wright v. Randell, 1 Blatch., 495.)

Second. In the order stated, comes the question to be now considered, namely : "Property *per se* in an invention '*created*' by the discoverer *and* inventor ?

In the opening of the discussion on this important and fundamental question, which in point of fact lies at the very root of the whole cause before the court, it is necessary to fully and conclusively define the word '*discovery*,' as solely and singly found in the aforestated provision of the Constitution ; its intimate connection with its correlative word '*invention*,' found in the Patent Law ; and an explicit statement of the metaphysical 'process of thought' by which 'discovery' is turned, by the '*creative genius*, of the '*discoverer*,' into a 'real and useful

thing' called an 'invention.' And here, let me consider the true and conclusive meaning of the word '*fact;*' because, the greatest defect of '*conclusions*' —therefore, of *judgments*—, is doubt of their indefectibility. This word is authoritatively declared to mean "a *thing*, which is or was ; an *act*, doing or done ; an *event*, passing or passed : consequently, a 'fact' cannot be *argued* into existence, any more than *argued* out of existence ; hence, with respect to *creating or avoiding* either obvious or authenticated 'facts' argument is an utter waste of time. A very different 'process of thought' is that of *deducing conclusions from facts;* for the '*principle*' is often found to be *the inherent correlative*, and therefore, the *very cause* of the discovered or declared 'fact.'

Having defined said terms, as connected with said 'process of thought,' namely, leading from '*discovery to invention*,' let us now proceed to show as a 'fact,' in the nature of things, that 'invention' is a condition subsequent—or resulting effect—to 'discovery,' its condition precedent. In order to apprehend and appreciate said primary and secondary conditions, we must *put ourselves in the inventor's place*, and thereby, so far as possible, see what are his conditions and 'processes of thought,' in the premises ; enumerated as follows: Some person, has suggested to him, that there is a *need*, in the community where he resides, for some device, or an improvement, in a well known and long used 'means to an end ; and he seeks to supply that need, by causing said 'means' to assume a 'new form,' 'work in a new way,' or produce a new and useful result —that is to say, 'bringing something into existence which never existed before.'' In order to accom-

plish this purpose and object he passes into the 'realm of the mind, and as he proceeds along the shores of that surging sea of thought, he *discerns* certain flotsam cast upon that shore — it may be the 'idea' of which he is in meditative search—; this he seizes with mental grasp, and brings out of the realm of the *ideal* into that of the *real and actual.* This is the process of '*discovery*,' both in *act and result*: the 'thing' to which the Congress is empowered to '*secure*' to inventors the '*exclusive right*,' by said especial and peculiar 'provision' of our Constitution.

But, *the inventor's work* is, in the nature of the case, *only partly performed*, for the following obvious reasons: 1st. Because, if said 'discovery' or 'idea' were kept secretly guarded from the knowledge of others, it would be of no benefit to the inventor himself or any one else: 2d. The said 'idea' must be made to assume some practical and useful form, in order that said 'discovery' may be seen, comprehended, and appreciated by the public: 3d. It is by virtue of its peculiar 'creation' "*unprotected property*," and the inventor must seek the said provided '*security*' for his '*discovery*,' before he can safely disclose his 'idea:" either by exhibition of its embodiment, or by 'experimental use' in public."

The inventor is constrained, therefore, to go through a *secondary and sequential* 'process of thought,' termed '*inventing*,' in the language of the Patent Law; and "which must exhibit something more than mere mechanical adaptation of skill in the art;" consequently, he must "reduce his 'idea' to practice and embody it in its own distinct form;" and also, contemporaneously therewith, he should

seek 'protection' for this *his own peculiar property*, 'provided' for this very purpose in said especial clause of the Constitution, and 'the laws made in *pursuance* thereof.' Hence, the 'inventor,' having performed said 'processes,' both *natural and political*, the 'peculiar property' thus defined becomes '*exclusively his own:*' first, by '*creation*' through "conception of the mind;" next, by "reducing the 'idea' to practical embodiment;" and, at last, by '*securing*' the 'protection' of said 'peculiar system of law'—through letters-patent—to his otherwise 'unprotected property.'

"*Affirmative* words are often, in their operation, *negative* of other objects than those affirmed:" Marbury v. Madison, 1 Cran., 174. See, also, definition of the word '*or*,' in Dumont v. U. States, 98 U. S., 142.

"It is a *rule of construction* of statutes, that *all* relating to the same subject matter shall be *considered together*": also, "What is '*implied* in a statute, pleading, contract, or will, is *as much a part* thereof *as what is expressed*:" and, "A thing *within the intention* of the makers of a statute, is as much *within the statute* as if it were within the letter:" U. States v. Babbit, 1 Black, 55.

"The *patent act* proceeds upon the language of *common sense* and common law, and has *nothing mysterious or equivocal* in it:" Earl v. Sawyer, 4 Mason, 1.

"*Invention* is the *work of the brain*, not of the hands:" Blandy v. Griffith, 3 Fisher, 609.

"The *time of the invention* is neither the date of the patent, nor the time when the 'idea' was first conceived by the inventor. It is the time *when the*

'*idea*' is *not only distinct and complete in the mind* of the inventor, *but* that the 'idea' *is reduced to practice and embodied in some distinct form*:" Mathews v. Skates, 1 Fisher 602.

"It means *not only when he* '*conceived*' that such a thing would be *desirable to do, but when* he conceived the 'idea' *to do it as he has done it*:" Wordman v. Stimpson, 3 Fisher, 98.

"An '*idea*' *of itself is not patentable*, but a *new device by which it may be made practically useful, is*:" Pencil Co. v. Howard, 20 Wall., 498.

"Inventors have a *right to keep their inventions secret*, if they can:" Bates v. Coe, 98 U. S., 31.

"It is that which *brings out of the realm of the mind* something that *never existed before*": Singer v. Walmsley, 1 Fisher, 558.

"A *patent* is to a certain extent *a contract*, by which the Government agrees *to protect the inventor*:" Ransome v. Mayor of N. Y., 1 Fisher, 252.

"*Patents* are dealt with by the courts, as *grants* of the Legislature *in exchange for equivalent* to be received *by the public*:" Carr v. Rice, 1 Fisher, 198.

"*Secrecy*, while perfecting the invention is *allowable*, and *may be indispensible* in order *to prevent piracy*:" Kendall v. Winsor, 21 How., 322.

"*Inventor's right is* '*exclusive*' even of the United States Government:" U. States v. Burns, 12 Wall., 252; U. States v. Palmer, 128 U. S. 269; James v. Campbell, 104 U. S., 388; Cammeyer v. Newton, 94 U. S., 234; and Shillinger v. U. States, 155 U. S., 163.

"A patentee has two kinds of rights in his invention, the one to make, use and sell specimens of the invented thing; the other, to prevent all others

from doing either of these acts. The first of these rights is wholly independent of the patent laws; while the second exists by virtue of these alone:" Bloomer v. McQuewan, 14 How., 539.

"*Suggested* improvements are *generally regarded* as the *property* of the party *who* '*discovered the original principles*:" Union Co. v. Van Deusen, 23 Wall., 530.

"The *invention set forth* in the letters-patent, *belong to the inventor as* rightfully as the *house he has built* or the *coat he wears*:" Stout v. Patton, 1 Fisher, 154.

"The general law declares that *the right to a patent belongs* to him who is the *first inventor, even before patent* is granted:" Evans v. Weiss, 2 Wash., 342.

"*Inventions* lawfully '*secured*' by letters-patent are *the property of the inventors*, and, as such, the franchise and the patented product are as much entitled to legal protection *as any other species of property*, real or personal. They are indeed property *even before they are patented*, and *continue to be such* without that protection, *until* the inventor has '*abandoned*' them to the public:" Jones v. Sewall, 6 Fisher, 343; and 91 U. S., 271.

"*Inchoate rights* at common law, and *exclusive rights* under act of Congress, are *named rights of property* under both forms of law; and, *inventions* are called *this species of unprotected property*:" Wilson v. Rosseau, 4 How., 646.

"Everything within the domain of the *conception* belongs to him who *conceives* it. The *machine, process, or product*, is but *its material reflex and embodiment*:" Smith v. Nichols, 21 Wall., 112.

"The *invention* consists *sōlely* in the *angular direction* given to the tube :" McClurg v. Kingsland, 1 How., 202.

"Information, advice, or suggestions, obtained from any source, do not impair rights of inventor :" O'Reilly v. Morse, 15 How., 62.

"In cases *where the invention* may be *exhibited in* a drawing or '*model*,' it will *date from the completion of such model* or drawing, as is sufficiently plain to enable those skilled in the art to understand the invention :" Loom Co. v. Higgins, 105 U. S., 594 ; Heath v. Hildreth, 1 McArthur 24 ; and Hubel v. Dick, 28 F. R., 139.

"*Models* are a species of evidence best calculated to conduct to the truth, evidence unaffected by the prejudices of partisans or the opinions — reveries they may be often called—, of experts. No witness can testify so clearly as do these subjects—though mute—concerning which a controvesy about identity is pending :" McCormick v. Talcott, 20 How., 402.

In relation to the phrases 'invented *or* discovered, 'inventor *or* discoverer,' and 'invention or discovery,' found in sections 4886, 4888, 4893, R. S. U. S., respectively, see a regularly and chronologically arranged series of citations from the decisions of this Supreme Court, herewith accompanying ; showing that said terms should be transposed, and the word, '*or*' changed into '*and*,' so as to harmonize not only with the 'natural law' of the case, but with the enlightened progress made in said 'decisions,' in above relation, from the year 1818 to last term of court, 1895.

The summary of the above declarations of fact and law, together with the aforestated decisions of courts, in relation to the foregoing question of the 'created property' in the 'inventions,' is briefly stated as follows: 1st. That 'discovery' is both the process and result of 'thought:' 2d. That 'invention' is, as the direct sequence of said process and result, the secondary and successive 'work of the brain'—that is, what has been aptly termed, the 'inventive faculty'—so as to produce the embodiment of said 'discovery' in some distinct form; in order that the 'discovery *and* invention' shall result in some 'new and useful thing:' 3d. That the 'discovery' *belongs* to the 'inventor' by the supremely 'exclusive right' of its '*creator*.' Hence, the thing 'discovered *and* invented' is the *natural property* of its 'original inventor': 4th. That 'invention' is an entirely separate 'process of thought,' and of an essentially different nature, from that of 'discovery.' Hence, these obviously natural processes and conditions of precedence and sequence, were probably the reason why, in said 'provision' of the Constitution, the term 'discoveries' was chosen and used for that of 'inventions': 5th. That, sequentially, said terms 'discovery *and* invention,' not being identical processes or things, cannot rightly be made interchangeable words, nor used as having synonymous meaning. Hence, as 'invention' is contingently separable from said *prior* process of 'discovery,' so the subsequent process may necessarily take a long time for its satisfactory performance—if it take place at all: 6th. That, as 'invention' is the 'new and useful' embodiment of an 'idea,' so does said 'embodiment' become the 'natu-

ral property of the inventor,' through the *supreme law of* '*creation*' : 7th. That, in strict accord with each and all of the above stated sequences of fact and law, whenever an 'inventor' has fully observed and performed all of the aforesaid processes and conditions, *both natural and political*, and has *thereby* become the '*exclusive owner*', of said '*natural property*' of his own '*creation*,' as aforesaid ; *no person*, not even the United States Government, wholly or in part, has the rightful power to infringe, modify, hinder, or *limit in the least degree whatever*, this 'sacred covenant' betwen the entire 'Nation' and each one of its own 'citizens,' namely, "*securing* for limited times to *inventors* the *exclusive right* to their *discoveries*."

Third. In said stated order, we now come to the question of "*Experimental use* of an invention *under* stipulations of an *express contract?*"

This proposition of mixed law and fact points directly to the consideration of said stipulations, namely, those found in the contract—stated in the '6th finding' of the court below, and recited in full on pages, 8, 9, 10, and 11, of the printed 'transcript' —, made "by and between the said United States (by the Postmaster General) and said Samuel Strong, on February 18th, 1870, and to continue thereafter for four years ;" and the *first two clauses* of the *first section*, reading as follows: "First. That the said Strong shall manufacture, furnish, and erect, for the *use* of the United States aforesaid, all cast-iron street letter-boxes of the size, shape, weight, and '*model*' of either the small and large box, *deposited by him* in the Post Office Department at

Washington (the former marked *A* and the latter *B*), which the Postmaster General may order. * * * "And should said boxes, of either the large or small size, and the '*model*' aforesaid, when in use, fail to give satisfaction to the Postmaster General, the said Strong shall '*model*' and manufacture *other boxes*, with such *alterations and improvements* therein as the Postmaster General may *suggest*, and shall *continue* to make '*new models*' until *two boxes*, one of the large and one of the small size, giving entire satisfaction to the Postmaster General *shall be adopted;* according to which '*models*' all subsequent *boxes* shall be made made," &c.

That the technical word '*models*,' in said text, was plainly intended to show that the *subject* of the contract was an '*invention*, receives indubitable *confirmation from several items of said* '*evidence of record*,' namely: 1st. The technical meaning of the word '*model*' used in the section 4891, R. S. U. S., in relation to 'applications' for letters-patent: 2nd. By comparing said word with that of '*patterns*,' technically used by those 'skilled in the art' of *moulding and casting metals*, like unto the said 'Peekskill Plow Works,' the '*other party*' to the said '*sub-contract*' heretofore cited.

In accordance with this statement of *fact* and correlative *law*, see the term '*wooden patterns*' used in said sub-contract, in the 'request for findings,' 9, herewith: 3d. In the 'deposition' of Postmaster General 'Cresswell,' who *signed* both said 'express' and, its other portion, the 'sub-contract'—for said Defendant and Appellee—, in accordance with stipulations to that effect. In said 'deposition'—found on pages 90 and 91 of the aforesaid 'Exhibit K,'

herewith—, the Postmaster General says "We dealt with Mr. Strong as the *owner and inventor* of that street letter-box—at least, I did. I said 'we,' meaning the Department. We contracted and paid for the '*use*,' of that number of boxes, and their ownership. Of course, they became the property of the Department. The Department paid for them:" 4th. In the peculiar language of this contract, which makes it almost unique, in view of the terms generally used in contracts by the Postmaster General, relative to articles in common use in the 'postal service'—such as mail-bags, locks, keys, stationery, stamps, twine, &c.—, in that the words, 'specimen,' or 'sample,' are respectively used to describe the representative of its kind; while this 'express contract' uses the word '*model*,' instead of either of the above quoted words, both as *verb and noun*, namely, "shall 'model' * * * and shall continue to make 'new models' * * * &c.; which makes said contract not only *tentative in its nature*, but obliges 'said Strong,' at any time during its whole legal existence, whenever required by the Postmaster General, to 'invent' 'new embodiments' of 'archetypes of inventions,' "according to which last 'embodiment' or 'Model' all subsequent boxes were to be made."

Further comment on this question is deemed unnecessary, as said contract so obviously shows, by its very language, the 'experimental use' of an invention; and it only remains, in conclusion, to cite the following cases, among many others, containing 'decisions' of this' honorable Supreme Court, contrasting '*experimental with public use*,' namely, Fruit Jar Co. v. Wright, 94 U. S., 94; Elizabeth v. Pavement Co., 97 U. S.. 135; Worley v. Tobacco

Co., 104 U. S., 340; Egbert v. Lippman, 104 U. S., 336; and Beedle v. Bennett, 122 U. S., 77.

Fourth. In stated order, we come to the next question, namely, "*Exclusive use* under an *implied contract* of an *improved invention*, resulting from and during said *experimental use?*"

The claimant—now appellant—plead in the court below the following—stated in sections 8 and 9 of his 'petition,' and confirmed by said 'findings' 11 and 12, of the court—, namely: "8. The claimant further says, that said Government, since February 18th, 1874, has *caused to be made* and has *constantly and continuously used*, and is *now ordering*, *using*, *continuing to use*, the said street letter-boxs of substantially the said letters-patent—", &c.; and, "9. Claimant further says, that the 'United States' has, since February 18th, 1874, *neglected to pay* said Samuel Strong * * * or said claimant, any sum of money *for the use* of said street letter-boxes," &c.

The confirmation of the above quoted 'facts' is as follows, in said findings,' "XI. That *after* the filing of the *original petition* in this case, to wit, on October 27th, 1891, there were *issued to the claimant*, George E. Kirk, assignee of said Samuel Strong; letters-patent No. 462224, which letters-patent are made a part of the 'petition' herein as 'Exhibit M,' and which said letters-patent cover the *same and identical* street letter-box, adopted by the Postmaster General, known as the '*round-top*,' and which was '*modeled*' *and manufactured* by said Strong as hereinbefore set forth:" and, "XII. That, subsequent to February 18th, 1874, the date when the said contract with said Strong expired, the Postmaster General *contracted* with the Union Foundry and

Manufacturing Company, of Reading, Pa., and '*others, at divers times,*' to manufacture and furnish to the Post-Office Department the *same and identical kind* of street letter-boxes *theretofore* '*modeled,*' manufactured and furnished *by said Strong under his contract aforesaid.*"

Therefore, these 'findings' of said court below not only *corroborate* the averments made in said 'petition' of claimant, but also find as a 'fact' that said Department, as aforesaid, *did* "cause to be made, and *did* continuously use, the letter-boxes of said letters-patent No. 462224;" that is to say, *did* make 'exclusive use' of said 'property' of Samuel Strong and of his assignee, the claimant, *by said act* of the Postmaster General—thereby binding the 'Nation' his principal—, of taking and using the same, and thus *excluding* the rightful owner thereof from all his aforesaid 'exclusive right' in the premises, the presumedly 'secure protection' to which had been *granted by this very exclusive' user,*' under the *solely* 'sovereign authority' of the 'Nation' expressed in said 'supreme law of the land; and also, meanwhile, entirely segregating to the use of said Defendant and Appellee this very 'exclusive right' belonging *solely* to its '*creator,*' without the least prospect of *compensation* therefor; and also without power to even seek for remedy or redress through the courts against the 'divers others,' who were furnishing said letter-boxes to said Executive of the Defendant, under *illicit contracts* made by such manufacturers as said 'Union Foundry Company.'

Hence, the summary of the above conclusions of fact and law may be briefly stated as follows: That, the Executive of the Appellee, and as the 'natural'

defendant in this cause, having, as aforesaid, granted and issued to said claimant and appellant the 'secure protection,' of the aforesaid letters-patent, to the 'exclusive right' in his said 'natural property;' and also, having, as aforesaid, taken and made 'exclusive use' of said 'property' without 'due process of law' or 'just compensation' therefor; is completely estopped from denying any of said acts, and also from denial or refusal of said 'just compensation,' for the 'exclusive use' of said 'property' during the term of said justly presumed 'implied contract.'

Fifth. In stated order we now come to the next question, namely, "*Exclusive use* of said 'improved invention' *by the Defendant* under said '*implied contract*,' during the intermediate period *between* the '*application to* and issue of '*letters-patent*' *by* the said '*exclusive user*' ?

The term 'implied contract' naturally presents the preliminary query as to its nature, origin, and duration? When said 'tentative contract terminated by express limitation, the *subject* of the contract *had been* an 'invention,' the archetype of which was the 'model' declared to be "deposited in the Post Office Department, and marked for identification." Indupitable proof was presented to the court below that over a dozen 'improvements' were made, and that, sequentially, 'new models' were 'deposited' as before and under like conditions, to show the nature of said improvements, so that "according to which '*models*' all subsequent *boxes* shall be made." Therefore, when said contract ended, '*the invention*' at its beginning *had been so altered* that it was *not*, in

the very nature of the case, the '*same and identical*' street letter-box, either, "recommended by said Postal Convention," or, *at first* "deposited in the Post Office Department"; but, it was, in reality, "the same and identical letter-box," which had been the *subject and result* of said 'experimental use,' and thereafter became, sequentially, the subject of the 'claims' of the 'application' upon which the *letters-patent, No.* 462224, were granted and issued; and also, as such 'identical box,' *became* the subject of said 'improved invention' which *was* '*exclusively used*' by the 'Executive' of said 'grantor,' under said sequentially '*implied contract*,' all along during the '*contemporaneous period*' which passed "between the application *to* and the issue of its patent *by* the said '*exclusive user*."

The following are some abstracts of 'decisions' of courts, in relation to the above statements of fact, namely: "The Court of Claims has jurisdiction of all *actions* brought by owners of 'patent rights' *against the* '*Government*' of the United States for compensation for '*implied licenses*' to the 'Government,' to *make and use* '*patented inventions*'; U. States v. Burns, 12 Wall., 246; U. States v. Palmer, 128 U. S., 269; U. States v. McKeever, 23 Off. Gaz., 1525.

"Constitutional provisions shall be liberally construed. A close and literal construction deprives them of half their efficacy and leads to a gradual depreciation of the right, as if it consisted more in sound than in substance;" Boyd v. U. States, 116 U. S., 616, 635; and Shillinger v. U. States, 155 U. S., 163.

"Acquiescence in *unpaid-for use* does not always imply that no *compensation is to be expected.* It is more *reasonable to imply* an agreement for a *quantum meruit*, than to imply that the user unlawfully seized upon the invention of the patentee. (Same cases just above cited.)

"Patent rights are exclusive, not only of citizens and residents of the United States, but also of the '*Government itself*, and of its agents:" Cammeyer v. Newton, 94 U. S., 234; James v. Campbell, 104 U. S., 356.

"A government is never guilty of tort. Between a government and its own 'citizens, *acts tortious* as between individuals are deemed to be founded on '*implied contract*,' or public necessity, and not on malicious motive:" Straughan v. U. States, 1 C. of C., R., 324.

"A contract may be made to convey a future invention as well as for a past one, and one for any improvement upon a past one:" Nesmith v. Calvert, 2 Robb., 311.

"Where a *patent* has been *applied for* an invention, the court has *jurisdiction to restrain* its infringement, *pending a hearing*:" Butler v. Ball, 27 Fed. Rep., 754.

"Patent rights are *property*. Therefore, *their owners cannot be constitutionally deprived* of those rights *without* due process of law: 'Due process of law' includes the *constitutional judgments and decrees of court;* but does *not* include *any act of Congress*, or of any other legislature:" Brown v. Duchesne, 19 How., 195; Seymour v. Osborne, 11 Wal., 533; Marsh v. Nichols, 128 U. S., 612; Burmem v.

Baltimore, 7 Peters, 247; Taylor v. Porter, 4 Hill (N. Y.), 147; and Kent's Com., Sec. 24, p. 13.

"In the absence of contrary evidence, *the invention covered by the particular patent*, is presumed to be *identical with that covered by the application* on which those letters-patent were granted:" Loom Co. v. Higgins, 105 U. S., 580.

"To the Constitution of the United States the word 'SOVEREIGN' is totally unknown. There is but one place where it could have been used with propriety. But even in that place it would not, perhaps, have comported with the delicacy of those who ordained and established that Constitution. They *might* have announced themselves 'SOVEREIGN' '*people of the United States*;' but, *serenely conscious of the fact, they avoided the ostentatious declaration*:" Chisholm v. Georgia, 2 Dallas, 419 (1793).

"The Government of the United States has been emphatically termed a government of *laws*, and not of *men*. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for violation of a vested legal right. * * * The question, whether an act, repugnant to the Constitution, can become the law of the land, is one deeply interesting to the United States; but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to be long and well established, to decide it. *That 'the people' have an 'original right' to establish for their future government, such principles, as, in their opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected.* * * * This original and supreme will organizes the goverment, and assigns to differ-

ent departments their respective powers. * * * *It is a proposition too plain to be contested, that the Constitution controls any legislative act repugnant to it;* or, *that the legislature may alter the Constitution by an ordinary act,* * * * Certainly all those who have framed written Constitutions contemplate them as forming the fundamental and permanent law of the nation, and, consequently, the theory of every such government must be, that *an act of the legislature repugnant to the constitution, is void,* * * * It is emphatically *the province and duty of the judicial department to say what the law is.* Those who apply the rule to particular cases, must, of necessity, expound and interpret that rule. *If two laws conflict with each other, the court must decide on the operation of each.* So, if a law be in opposition to the constitution; *if both law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the consqitution;* or *conformably to the constitution, disregarding the law; the court must determine which* of these conflicting rules govern the case. *This is the very essence of judicial duty.* If then the courts are to regard the constitution, and the constitution is superior to to any ordinary act of the legislature, *the constitution, and not such ordinary act, must govern the case to which they both apply.* Those then, *who controvert the principle, that the constitution is to be considered in court as a paramount law,* are reduced to the necessity of maintaining *that the courts must close their eyes on the constitution and see only the law.* This doctrine *would subvert the foundation of all written constitutions.* * * * It would be *giving to the legislature a practical and*

real omnipotence with the same breath *which professes to restrict their powers within narrow limits.* It is *prescribing limits* and *declaring that those limits may be passed at pleasure.* * * * From these * * * it is apparent, that the framers of *the constitution* contemplated that instrument as *a rule for the government of courts as well as of the legislature.* Thus, *the particular phraseology* of the Constitution of the United States *confirms and strengthens the principle,* supposed to be essential to all constitutions, *that a law repugnant to the constitution is void*; and *that courts, as well as other departments are bound by that instrument:*" Marbury v. Madison, 1 Cran., 137, (1803).

"The rule is familiar and well settled, that, in case of obscure and doubtful words and phraseology the *intention of the law-makers* is to be resorted to, *if discoverable from the context,* in order to fix and control *their meaning,* so as *to reconcile it,* if possible, *with the general policy of the law:*" Wilson v. Rousseau, 4 How., 677.

Hence, the summary of the above conclusions of fact and law, in addition to what has gone before, is briefly as follows: 1. That the appellee, through its Executive, made said 'public use' in the premises an '*exclusive* one, in that *complete possession* was taken of the '*identical*' *invention* which was *covered* by said letters-patent and the 'application' upon which they were granted, even to the *total suppression of the* '*exclusive right*' of the 'discoverer *and* inventor *over his own* '*created*' *property;* and over which said 'patent' was justly presumed to 'securely' throw the mantle of legal protection.

2. That said 'inchoate right,' being one of incipient nature, springing from the 'realm of mind,' is entirely independent of the law which makes patents its creatures, through acts of legislation.

3. That laws, to be rightly effective in their execution, must be made in 'pursuance' of and not 'repugnant' to the Constitution; and also, such laws as shall be best conducive in '*promoting*,' not '*obstructing*,' the 'declared objects' for the '*securing*' of which said Constitution was therefore 'ordained and established.'

4. That, sequentially, any 'Act of Congress' is void *ab initio*, which is 'repugnant' to the principles, intent, and object of the aforesaid provision in the Constitution, relating to the 'inventors' and their 'discoveries'; such as for instance, the 'statute of limitation' cited by the said court below—section 1069, R. S. U. S.—, in justification for *cutting down* the said 'just compensation' *far below* what the 'measure of royalty' made it, and which was '*fixed*' by the Executive himself, in the 'express contract' to which he was a 'party' acting 'in behalf of said Appellee.'

5. That, also sequential to all of the above, the Congress was *empowered only* to give said 'rightful effectiveness' to the 'Patent Law' in the premises; and *not to nullify or destroy* the '*security*' already granted by letters-patent, under the *especially* 'ordained and established' provision of a *prior* 'supreme covenant,' between the 'Nation' and *one of the class* of its most beneficial *citizens*.

Sixth. We now come to the last question in said stated order, namely, 'Exclusive use' by said De-

fendant under an 'implied contract,' dependent upon 'express contract and its sub-contract,' whereby the 'standard of royalty' was established between the contracting parties by said user?

This question of law and fact being closely connected with the two next prior questions, will be, therefore, more briefly considered and discussed.

When the aforesaid 'express contract' terminated, on February 18th, 1874, by express limitation of four years' duration, all the patentable 'inchoate rights,' derived from said 'experimental use,' inured to the inventor, Samuel Strong, and the assignor in the premises: therefore, seeing the need of speedily 'securing' the said 'protection,' provided especially for the very conditions in which he was placed, he 'filed' his '*application*' for 'patent' on *March 9th*, 1874.

Having so far enjoyed the benefits derived from the strict fulfilment on his part of said 'tentative contract,' the said Strong completed his arrangements, as just stated, to derive further benefits from the presumed 'protection' to said 'exclusive right' over said 'improved invention,' under the constructive stipulations of an 'implied contract'—it having been fully understood by him, that the Executive of the Defendant had no intention of renewing said 'express contract'; while, at the same time, was prepared to make 'public use' of said Strong's 'private property.'

The 'implied contract'—which constructively arose from the *implied principle* of the *eminent right* of public use' of 'private property' through *governmental necessity* in the premises—therefore, *began* to run from the date of the execution of an 'express

contract, made on *July* 21*st*, 1874, "by and between the United States of America' (acting in this behalf by 'James W. Marshall,' Postmaster General), of the first part, and 'The Union Foundry and Manufacturing Company, of Reading, Pa., of the second part," &c. It will be remembered that this same Postmaster General was the '*author*' of the said '*letter of protest* to the Commissioner of Patents, dated on *July* 29*th*, 1874, making about eight days interval between said 'letter' and said *previously* executed 'express contract' : showing conclusively *two things*, namely, that said Department' had been fully informed of said 'application' of Samuel Strong, 'filed' over *two months prior* to the existence of both said 'letter' and contract ;' and, that said 'Department' was *in need of another supply of said street letter-boxes.*'

Hence, the Postmaster General, not feeling inclined to make another contract with said 'Strong,' *did make one with another party*, in which it was agreed that—that in the words of the contract, found on page 91 of said 'printed record.—, "the said Company will manufacturer and deliver * * *, for and during the term *of one year* from and after the first day of August, 1874, all cast-iron street letter-boxes * * * , of the size, shape, and '*model*' of the small and large *boxes now in use* by the Post Office Department, and *heretofore furnished* to the said Department by a certain Samuel Strong under a contract, * * * , bearing date February 18th, 1870," &c. : and,—in the words of 'finding XII,' of the court—, "The Union Foundry and Manufacturing Company, * * * to manufacture and furnish * * * , the *same and identical kind* of street

letter boxes *theretofore* '*modeled*,' manufactured and furnished *by said Strong*," &c. : and also,—in the words of 'finding' XI,' of court—, "*which said letters-patent cover*."

Having already sufficiently commented on the tenor of said Postmaster General's 'letter of protest,' in said 'statement of errors, numbered 7 and 8, herein, it seems proper to note only, at this present, *some contemporaneous history of the Post Office Department*, in order to show, *first*, the *number* of street letter boxes made and used as aforesaid, *soon after* the termination of said 'Strong-contract,' and *until* the said 'implied contract' ceased ; and, *second*, the '*rate of royalty*' fixed by the 'parties' in said *two essential parts* of the 'Strong-contract.'

This information is furnished by certain 'letters of response,' *officially written* in answer to certain 'interlocutory orders' of said court below, and to which this honorable court is referred, namely: to 'interlocutory orders' dated April 10th, 1885, and December 2d, 1891, on pages 11 and 88, respectively; and said letters of response thereto,' dated May 4th, 1885, and December 5th and 7th, 1891, on pages 12 and 89 respectively, of said 'printed record of this cause,' containing substantially the following 'facts of official record,' namely, "It appears from the records of this office, there were ordered for the use of the free-delivery post-offices from September, 1874, up to this date (Dec. 5th, 1891), 40529 street letter boxes:" also, "No boxes of the style and pattern referred to are *now* manufactured for the Government."

The text of said 'sub-contract'—the essential part of said 'Strong-contract'—, is found on page

29 of said 'Exhibit K,' herewith, and quoted in substance in the 'request for findings,' numbered 9, on page 61 of said 'printed record,' to both of which this honorable court is respectfully referred.

By comparing the two portions of said Strong's contract together, it will be at once seen that the 'royalty' paid to said Strong for the *use* of said 'invention,' during the whole time of said 'express contract,' was at the rate of $3.50 for each letter-box, without any regard to the *two sizes* named in said contract.

The conclusions which are evidently derivable from the aforesaid statements of 'fact,' founded upon said official sources, are briefly recited as follows:

1. When said 'tentative contract' terminated, all patentable rights derived by said Strong, under the stipulations therein, became his *sole and exclusive* property under special 'provision' of the Constitution:

2. When said 'application' of March 9th, 1874, was 'completed' according to law, made in 'pursuance' of said 'provision'; and said patent, No. 462224, was granted and issued by the Executive of the Defendant and Appellee aforesaid to the assignee and Appellant at bar of court; *the* '*protection*' thus 'secured' was essentially *retrospective* in its nature, and *segregated* said 'exclusive right' to said 'peculiar property' from all intrusion or infringment in any way whatever, *from and after* the date of the '*completion and filing* of said 'application' *up* to the termination of the limited time' of the duration of said patent:

3. That, after said 'exclusive right' had been thus 'secured' to its 'creator *and inventor*' by virtue of said 'provision' in the 'supreme law of the land,' the Legislative branch of this Government is nowhere 'empowered' to enact a law which could, or would rightfully or legitimately interfere in the least degree, with said 'exclusive right':

4. That, sequentially, when the Postmaster General in behalf of the Appellee, *undertook* to make the aforesaid '*illicit contract*' with said 'Union Foundry Company,' under the conditions therein stated, he was probably *unaware* that said contract was void *ab initio:*

5. That, also sequentially, the said '*fixed rate of royalty*'—namely, $3.50 on each and every letter-box 'manufactured and furnished' by the said 'Peekskill Plow Works,' under said 'express and its subcontract'—, which was paid to said Strong for the '*use*' of his invention during the whole time of his contract, is justly due to said assignee and claimant, for the '*use*' of said 'improved invention,' under the derivative conditions of said 'implied contract.'

Hence, there is now owing to said assignee, claimant, and appellant, by said Defendant and Appellee, through its Executive, at said 'fixed rate' per box, $3.50, on said acknowledged number of 40,529 street letter-boxes, or, the sum of $141,850.50; said sum being the 'just compensation' for the 'public use' of said 'exclusively private property,' *from* the beginning of said 'implied contract' on June 21st, 1874, *up to* the termination thereof on December 5th, 1891; and furthermore, without respect or regard to any

'statute of limitation,' rendered incapable of becoming an effective law in the premises, in accordance with said especial 'provision' of the national Constitution, in relation to the "exclusive right of inventors to their discoveries."

This concludes the brief of the appellant in the above entitled cause, all of which is most respectfully submitted.

R. H. STEELE,
Counsel for Appellant.

APR 2 1896
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE E. KIRK,
APPELLANT,
v.
THE UNITED STATES.

No. 214.

Appeal from the Court of Claims.

BRIEF FOR APPELLANT.

ROBERT A. HOWARD,
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Of Counsel.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1896.

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No. 214.

Appeal from the Court of Claims.

BRIEF FOR APPELLANT.

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Of Counsel.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1896.

Supreme Court of the United States.

OCTOBER TERM, 1895.

GEORGE E. KIRK,
APPELLANT,
v.
THE UNITED STATES.
No. 214.

Appeal from the Court of Claims.

Brief for Appellant.

STATEMENT.

This is a suit brought by George E. Kirk, as assignee of Samuel Strong, inventor and patentee of certain improvements in street letter-boxes, to recover for the use of such improvements by the United States, as upon contract. The original petition was filed on October 27, 1884. Several amended petitions were, from time to time, filed by the claimant by permission of the court. On January 26, 1891, claimant filed his amended petition to stand in lieu of former petitions, to which were attached as exhibits the assignment to Kirk: two contracts for cast-iron sheet letter-boxes between the United States and

Samuel Strong, claimant's assignor; two letters patent, numbered respectively 88,528, dated March 30, 1869, and 94,449, dated August 31, 1869, each for improvemen in street letter-boxes; specifications in the application for letters patent by Samuel Strong, filed March 9, 1874, and amended specifications in said application, filed March 23, 1889; and communications from the Commissioner of Patents, of date September 19, 1890, notifying claimant that his last-mentioned application had been allowed and the final fee paid. On January 15, 1892, claimant, by leave of the court, filed his further and final amended petition, to which was attached as an exhibit, in addition to the exhibits hereinbefore described, a copy of letters patent, granted in accordance with the applications of March 9, 1874, and March 23, 1889.

These exhibits are found in the *Transcript herein, pp.* 1–26, *inclusive;* and, in addition, are referred to and made evidence by the findings of the court (*Tr., pp.* 27–33).

On September 27, 1869, Samuel Strong executed to Gideon L. Walker an assignment of the patents numbered 88,528 and No. 94,449, and also all his right, title, and interest in and to a certain invention in street letter-boxes, the specifications of which do not appear. This fact is embraced in Finding No. IV (*Tr., pp.* 27, 28), though it is submitted it is immaterial upon this appeal.

While the contract of September 15, 1869, was in force, complaints were made to the Postmaster-General by postmasters and others that the letter-boxes furnished by Strong were too wide, unsightly in appearance, and unsatisfactory; and, in consequence of such complaints, the Postmaster-General convened a convention of postmasters and other officials, "to consult in regard to the general good to the postal service;" and this convention had before it for inspection several models of boxes, but rejected all of them,

and made a report to the Postmaster-General, January 15, 1890, in part as follows:

"The Postal Convention.—Letters to the Postmaster-General in regard to improvements in the postal service; reduction of fees for registered letters and postage on printed matter recommended.

* * * * * * *

"STREET LETTER-BOXES.

"That we condemn the street letter-box now furnished the Department under the contract known as the 'Strong patent,' and we would respectfully recommend the adoption of a street letter-box about 1½ feet in length, about 6 inches in depth, and 12 inches in width, with an opening at the top sufficiently large to receive newspapers and magazines, the opening or receptacles specially protected from the weather, with a curved top to carry off the water, and a door in the side or front, with side flanges, to take the matter from, and that the hours for collection be distinctly shown upon the outside of the box. Upon the request of the postmaster at any office the aforesaid described box should be furnished with an aperture for the receival of letters only."

Finding V, Tr. 29, 30.

The contract of September 15, 1869, was, upon these recommendations, cancelled, and a new contract (on a new contract) entered into between Strong and the United States on February 18, 1870, by which it was agreed that Strong should manufacture, furnish, and erect cast-iron street letter-boxes of the size, &c., of models exhibited; "and should said boxes, * * * when in use, fail to give satisfaction to the Postmaster-General, the said Strong shall model and manufacture other boxes, with such alterations and improvements therein as the Postmaster-General may suggest, and shall continue to make new models

until two boxes, one of the large and one of the small size, giving entire satisfaction to the Postmaster-General, shall be adopted." Letter-boxes were so modeled, manufactured, and furnished by said Strong and were in use up to the time of Strong's application for a patent, of March 9, 1874.

Contract, Tr., pp. 8, 9. *Findings VI and VII, Tr., pp.* 30, 31.

Shortly before the expiration of his contract, on February 11, 1874, Strong filed caveats in the Patent Office, and, afterwards, on March 9, 1874, his application and specifications (*Tr., p.* 16) for a patent upon the letter-box above mentioned; and on March 19, 1890, amended specifications. Of the filing of his caveats he gave notice to the Post Office Department. Whereupon, on July 29, 1874, the Postmaster-General addressed to the Commissioner of Patents a letter, as follows:

"SIR: Mr. Samuel Strong, of this city, has informed this Department that he has taken out two caveats to protect his alleged rights to a certain street letter-box now in use in the several letter-carrier cities by authority of this Department.

"Lest the said Strong should apply for a patent for said box, I desire to submit for your consideration the following statement, with the request that it be placed on the files of your office.

"The box in question has now been in use for four years, and was furnished by the said Strong under a contract with this Department, dated February 18, 1870, running four years from that date. The box in use in the several letter-carrier cities prior to 1870 was also furnished by said Strong, and was condemned by a convention of postmasters and special agents convened in this city in January, 1870, by invitation of Hon. J. A. J. Creswell, then Postmaster-General, for consultation in regard to the general good of the postal service.

"Said convention, among other things, stated 'that we condemn the street letter-box now furnished the Department under the contract known as the "Strong patent," and we would respectfully recommend the adoption of a street letter-box about 1½ feet in length, about 6 inches in depth, and 12 inches in width, with an opening at the top sufficiently large to receive newspapers and magazines; the openings or receptacles specially protected from the weather, with a curved top to carry off the water, and a door in the side or front, with side flanges, to take the matter from, and that the hours for collection be distinctly shown upon the outside of the box. Upon the request of the postmaster at any office the aforesaid described box should be furnished with an aperture for the receival of letters only.'

"The box above recommended by said convention was reduced to shape and form by said Strong substantially as described above, and can in no just sense be considered as the invention of the said Strong, he having simply carried out the views of the convention in this respect.

"I have, therefore, to request that a patent be not granted to the said Strong for the letter-box now in use and above substantially described." (*Tr.* 31, 32.)

Afterwards, on October 27, 1891, there were issued to claimant, George E. Kirk, as assignee, letters patent No. 462,224, which cover the identical box adopted by the Postmaster-General (*Finding XI, Tr.* 33). These boxes have been manufactured and used by the Post-Office Department since the filing of Strong's caveats, applications, and specifications.

The conclusion of law is that the claimant is not entitled to recover and the petition is dismissed.

The judgment is that the petition be dismissed.

From this judgment defendant appealed.

ASSIGNMENT OF ERRORS.

The court erred in dismissing claimant's petition.

The conclusion of law stated by the Court of Claims is simply a judgment that the plaintiff cannot recover upon the facts found, and that his petition be dismissed.

To ascertain whether error has been committed, it is necessary to refer to the opinion of the conrt, which is found in the record (*Tr., pp.* 33–36), and in which are stated the grounds upon which the decision rests.

And further, as much of the evidence in the case—in fact all of the evidence tending to prove the claimant's contention—is set out in the findings and the opinion, it is necessary for this court to review and compare the testimony, to determine whether the conclusions of fact and law, arrived at by the court below, are or are not correct.

The error complained of by the appellant is that the Court of Claims dismissed this cause because there was no contract, expressed or implied, between the inventor and patentee and the Government. This position appears to be grounded upon one, or both, of two propositions: *First*, that the use of the inventions of Strong was without his consent; *second*, that it was claimed he was not the inventor of the property used, and therefore could not maintain an action (Findings VIII and XII). The alternative of these propositions must be determined. They cannot exist together. It is confidently asserted neither can be maintained.

I.

THERE IS NO CLAIM OF OWNERSHIP ON THE PART OF THE UNITED STATES IN THIS CASE AS WOULD PREVENT THE MAINTENANCE OF AN ACTION FOR THE USE OF AN INVENTION.

Prior to the assembling of the postal convention of January 15, 1870, Samuel Strong had granted to him two

patents for street letter-boxes: one on March 30, 1869; the other on August 31, 1869. On the 15th day of September, 1869, he entered into a contract with the Postmaster-General, by the terms of which he was to furnish cast-iron street letter-boxes for the use of the United States, of the size, shape, weight, and model deposited by him, "each box to measure nine inches and one-fourth of an inch one way, and eleven inches and five-eighths of an inch the other; to be twelve inches high on the front and fourteen inches and three-quarters of an inch on the back." The contractor was to receive five dollars and fifty cents for each box furnished. Among other agreements in this contract were these: That if the said Strong should at any time make improvements in the construction or model *of his box*, the United States should have the benefit of such improvement, if approved by the Department, without additional charge; and that if the box adopted should in any way conflict or interfere with or infringe upon the patent granted to the owner of any other box, the said Strong and his sureties would save harmless the United States (*Tr., pp.* 6, 7). Four months after the execution of this contract the so-called Postal Convention met at Washington by invitation of the Postmaster-General, "for consultation in regard to the postal service." The letter-box was only one among many things they consulted about. Complaints had been made that the letter-boxes in use were "too wide, unsightly in appearance, and unsatisfactory." The convention recognized the "Strong patent," but condemned the boxes furnished under the existing contract, and recommended a street letter-box, giving an indefinite description of the same. This was all the convention did about letter-boxes. There is nothing in this description which is not in one or both the patents of Strong. The dimen-

sions of the box cut no figure, of course. But the opening at the top and the curved top and the door to take the matter from are substantially the same. Even if they were not, there is nothing in this description involving invention.

After this recommendation, by mutual consent, the above-mentioned contract was annulled and a new contract entered into between Strong and the Postmaster-General. It is to this contract we must look for whatever foundation there is for the extraordinary statements of the letter of the then Postmaster-General to the Commissioner of Patents. It is found on pages 8–10 of the transcript.

In this contract it is agreed that Strong shall manufacture, furnish, and erect for the use of the United States all cast-iron street letter-boxes of the size, shape, weight, and model of either the small or large box deposited by him in the Post Office Department at Washington (the former marked A and the latter B), which the Postmaster-General may order.

And should said boxes of either the large or small size, and of the model aforesaid, when in use, fail to give satisfaction to the Postmaster-General, the said Strong shall model and manufacture other boxes, with such alterations and improvements therein as the Postmaster-General may suggest, and shall continue to make new models until two boxes, one of the large and one of the small size, giving entire satisfaction to the Postmaster-General, shall be adopted, according to which models all subsequent boxes shall be made, the new boxes not, however, to exceed in size or weight those herein designated with the letters A and B.

It was further agreed, "that if the boxes now adopted, or which may be adopted under this contract, shall in any way conflict with or infringe upon the patent granted to

the owner of any other cast-iron street letter-box, that the said Strong and his sureties shall be liable therefor, and shall protect and save harmless" the United States.

This contract recognizes that Strong had invented certain improvements in street letter-boxes which had been and were being used by the United States. It provides for further improvements to be made from time to time, and for an experimental use of boxes, until one was perfected to the satisfaction of the Postmaster-General. The Postmaster-General was to make suggestions for such alterations and improvements as he thought advisable. But Strong, the original conceiver and inventor; Strong, the man of inventive faculties and capabilities; Strong was to meet the suggestion, remedy the defects, supply the wants. The Postmaster-General could continue to suggest during the life of the contract. Strong was to model and to continue to make new models also during the life of the contract, until the entirely satisfactory box was completed.

Under these provisions the modeling, manufacturing, furnishing, and use went on until, as the term of the contract was about to expire, the box having been perfected, Strong filed his caveat in the Patent Office to protect his invention. Of this he properly gave notice to the Post Office Department. This brought out the letter of the then Postmaster-General, who, it should be remarked, was not the person who had executed these contracts and made the suggestions above mentioned. In this letter it is claimed that the box recommended by said convention was reduced to shape and form by said Strong, substantially as described above, and can in no just sense be considered as the invention of the said Strong, he having simply carried out the views of the convention in this respect.

And, in the opinion, the court below says the facts show

that the box was under claim of ownership by the Department, there being no acknowledgment by the Postmaster-General, even tacitly, that Strong was the inventor, but on the contrary his claim of ownership was denied. The use of such box thereafter by the Department would not imply a contract to pay therefor, and without a contract under existing authorities there can be no recovery. (Schillinger's Case, 24 C. Cl's, R. 278.)

The letter was addressed to the Commissioner of Patents and was a protest against the granting of letters patent for the box modeled and made under the conditions above stated. It cannot be considered in any sense as a serious claim of ownership to this invention in the United States, such as a claim of property in lands or houses or tangible goods. The effect of such a protest, if considered, would be to declare, in the Patent Office, proceedings in the nature of interference, involving an inquiry into the validity of the patent. Such action was presumably taken, for the granting of the patent was delayed for years. Moreover, on September 19, 1890, Strong was notified that his application for patent had been allowed, and on the 27th day of October, 1891, patent No. 462,224 was granted. Said letters patent cover the same and identical letter-box modeled and manufactured by Strong and in use by the United States (Finding XI, *Tr.*, *p.* 33).

II.

While we might be content to leave this review at this point, inasmuch as some (although indefinitely stated) allusions are made by the court as to the absence of proof of consent on the part of Strong or his assignee to the use of the invention, it may be proper to notice this objection. For in the opinion it is stated that the aver-

ments in the petition looking to some privity between the Postmaster-General authorized to contract, and the claimant or his assignor, from which the court can conclude as matter of law that an implied contract exists, are not supported by the facts. The court further states, "it appears the only knowledge the Postmaster-General had as to Strong's claim on the box used is disclosed in his letter," &c. This is manifestly a mistake. There were, in addition to the caveats, the contracts and the previous patents. And here we may remark, as bearing upon this branch of the case, the Postmaster-General and the court appear to misapprehend the province of the caveat. It was not a threat or a warning, such as would bring this case within the doctrine of the Schillinger case. A caveat is defined in Rev. St., sec. 4902: "Any citizen of the United States who makes any new invention or discovery, and desires further time to mature the same, may * * * file in the Patent Office a caveat setting forth the design thereof, and of its distinguishing characteristics, and praying protection of his rights until he shall have matured his invention." This instrument is treated as confidential. But Strong notified the Post Office Department that he had taken this step. He made no objection to the use of the invention, or of any of his inventions, then or at any time. His patents were either obtained or applied for. The Department knew these facts. Is there not confusion in the opinion and decision of the court below as to the distinctions between express and implied contract? It seems that, after the expiration of Strong's contract, because another contract was not entered into, the court presumed there was no consent by Strong to the use by the Government.

"The consent of the parties is of the essence of a con-

tract. But this consent may be manifested in different ways. It may be manifest by *words*, written or spoken, or by signs which are not words. When it is manifested by words the contract is styled *express*. When it is manifested by conduct, or by signs which are not words, the contract is styled *implied*, or, more properly, *tacit*."

2 Austin's Jurisp. (3d ed., London, 1869), 1018.

This is not like the case of Hill *v.* The United States (149 U. S. 593). There land was taken by an officer of the United States under a claim that it belonged to the Government, and where the United States claimed a paramount right to its use, and this court held that a suit for use and occupation would not lie.

Nor like the case of Langford *v.* United States (101 U. S. 341).

How is it in this case? It is clear that a claim of property in the United States, to avail against the jurisdiction of the court to determine the question, must not be vague nor impossible nor ridiculous. It must be reasonable, definite, and existing at the time of adjudication.

Here the only claim of property in the Government is that contained in the letter of the Postmaster-General, copied in the findings and opinions of the court, and made the basis of the conclusion of law that no contract could be implied to pay for the use of the box.

But the Postmaster-General, in protesting against the issuance of a patent to Strong, gives us his reasons for the judgment he had formed. He says the United States, by the vicarious action of a board of postmasters and postal agents, had invented the box. The court goes one step farther and takes into the inventing junta the Postmaster-General.

The specifications of the invention are described in the

minutes of the postal convention in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains to make, construct, compound, and use the same.

To be sure, in the several letters patent granted to Strong are embraced all the features spoken of in the deliverance of the postmasters, except dimensions. These were probably omitted upon the consideration that there was no more invention exhibited in building the pyramid of Cheops than there was exhibited in building the pyramid of Apis.

Now, in the absence of a new written contract and of words of promise, how much stronger case could be made than is upon this record for the right to recover as of implied contract? The right of Strong to the invention has been firmly established. The pretended claim in the letter of Mr. Marshall is puerile and extravagant, and has been ignored by the Government itself. This letter-box was for the use of the Government alone. It is no further the subject of commerce or trade. It was invented, improved, perfected by Strong at the request and under the inducement and protection of the Government. No assertion of infringement has ever been made. A reasonable compensation, which had been notoriously allowed for the use of these boxes, is all that this claimant assignee has ever asked.

The right to recover upon an implied contract must rest, more or less, upon presumptions. When the constitution promises "nor shall private property be taken for public use without just compensation," it means that when his property is so taken the citizen shall be entitled to just compensation for it. That is the catechismal answer taught to every American youth. And when a tribunal was established in which a claimant could recover that

compensation, an express contract not having been made, upon implied contract, unless elements of tort entered into the transactions, all the presumptions must be in favor of recompense.

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Office Supreme Court U. S.
FILED.
APR 2 1896
JAMES H. McKENNEY,
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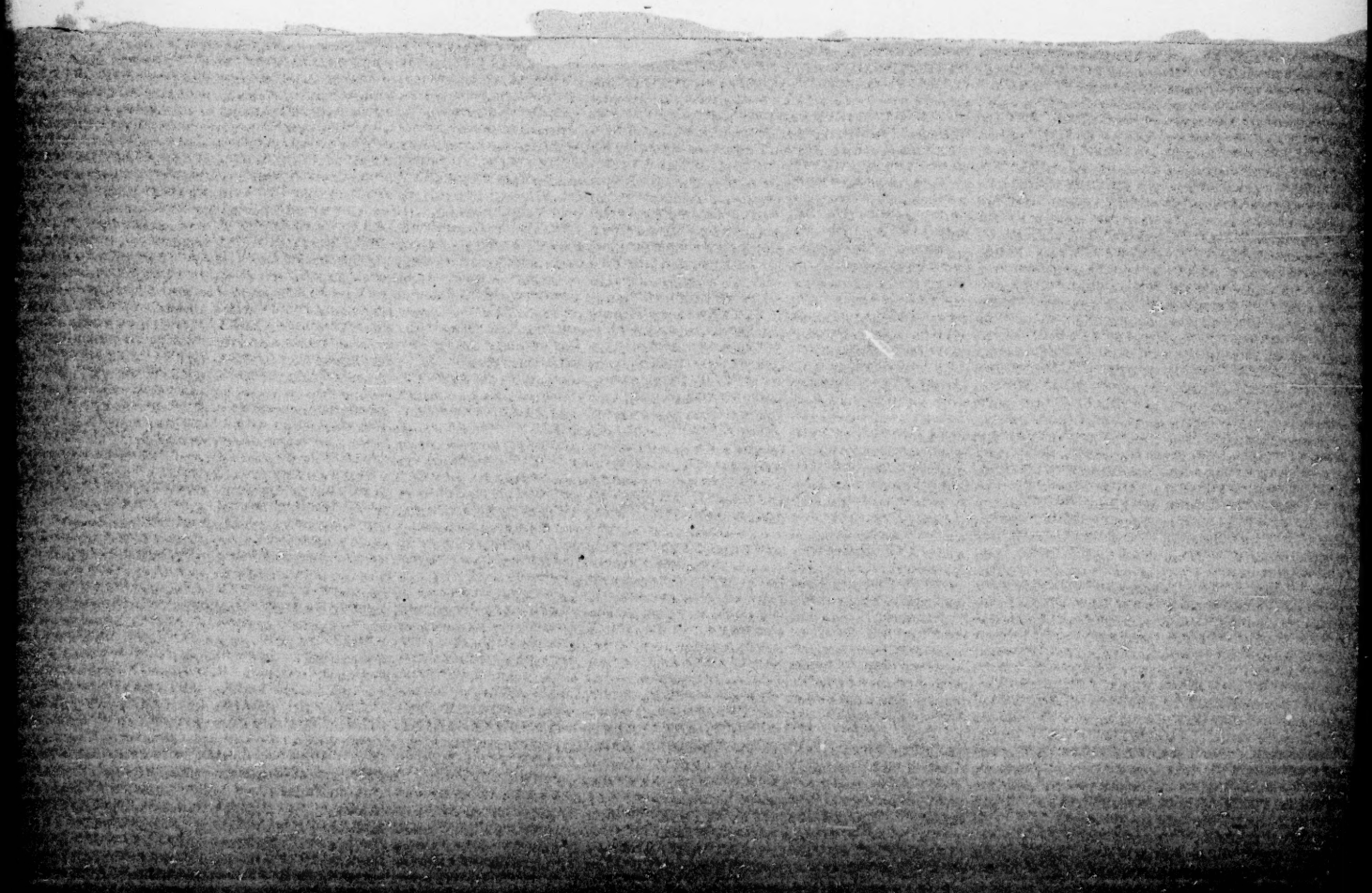

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APPELLEE'S BRIEF.

STATEMENT OF THE CASE.

The appellant, George E. Kirk, is the owner, by assignment, of letters patent No. 462,224, for a street letter box, issued October 27, 1891, to Samuel Strong, who filed his application therefor March 9, 1874. (Rec., 27, 33.) This type of box was devised by the Postmaster-General in pursuance of certain suggestions made by a convention of postmasters and others in 1870, and as so devised was modeled and manufactured by the said Strong, under the instructions of the Postmaster-General, by virtue of a

contract between the Postmaster-General and Strong, dated February 18, 1870, whereby Strong undertook to model, manufacture, furnish, and erect such letter boxes for the use of the United States for the term of four years. (Rec., 30, 31.) These boxes were in public use in the letter-carrier cities of the United States for more than two years before the date of the application for the patent. (Rec., 31.)

In July, 1874, the then Postmaster-General, learning that Strong's application for a patent had been filed as above stated, wrote to the Commissioner of Patents protesting against the issuance of a patent to Strong on the ground that the box could "in no just sense be considered as the invention of the said Strong, he having simply carried out the views of the convention in this respect." (Rec., 31, 32.)

After February 18, 1874, when the contract with Strong expired, the Postmaster-General contracted with other parties for letter boxes of the same type, but it does not appear what number, if any, of such boxes were purchased and used by the Post-Office Department after October 27, 1891, when the patent was issued to Strong. (Rec., 33.)

Strong is also the patentee of other improvements in street letter boxes, under patent No. 88,528, dated March 30, 1869, and patent No. 94,449, dated August 31, 1869; but these patents cover devices which were not used in the letter box covered by the patent in suit, and they were assigned to one Gideon L. Walker, and not to the appellant. (Rec., 27, 28.)

Strong is also the patentee of a street letter box, under patent No. 253236, dated February 7, 1882; but this patent covers a device which was not used in the letter boxes covered by the patent in suit, and the appellant has no interest therein. (Rec., 32.)

BRIEF OF ARGUMENT.

The amended petition in this case, filed January 15, 1892, avers that the claimant "is the assignee of the entire interest and property of certain improvements in so-called street letter boxes, made by Samuel Strong, inventor of said improvements;" that in January, 1870, a board of postmasters was appointed to examine and recommend the adoption of street letter boxes, and that—

> On or about the 15th of January, 1870, said board met at Washington, D. C., and recommended for adoption to the Postmaster-General the boxes filed with the said board and known as the Samuel Strong boxes, or inventions; and it was the intention and understanding of the Postmaster-General, and the defendant, and the inventor of said letter boxes, that the invention so selected and adopted should be used by the Government of the United States, and a reasonable and just compensation made for the use of the same.

The petition further states that these boxes were adopted by the United States, and used by it continuously since February 18, 1874, without any compensation to the claimant, now the appellant, for such use. (Rec., 23–24.)

Were these statements true, a privity would exist between the appellant and the appellee, upon which this

suit could be maintained. Such, however, is not the case; and, on the contrary, the findings show that this board or convention did *not* recommend for adoption any boxes then known as "the Samuel Strong boxes," but, on the contrary, the board condemned the box then known as the "Strong patent," and recommended in its place—

> the adoption of a street letter box about 1½ feet in length, about 6 inches in depth, and 12 inches in width, with an opening at the top sufficiently large to receive newspapers and magazines; the openings or receptacles specially protected from the weather, with a curved top to carry off the water, and a door in the side or front with side flanges to take the matter from, and that the hours for collection [be] distinctly shown upon the outside of the box. (Rec., 29.)

Moreover, pursuant to these recommendations, and in accordance therewith, a street letter box was *devised* and adopted by the Postmaster-General, and, *under his instructions*, was modeled and manufactured by Strong, who contracted to model, manufacture, and furnish such boxes, "with such alterations and improvements therein as the Postmaster-General may suggest," for the term of four years, and it was this street letter box, *devised* by the Postmaster-General, of which Strong afterwards claimed to be the inventor, and which was ultimately patented to him October 27, 1891, precisely seven years after the original petition in this case was filed. (Rec., 30, 31, 33.)

It is clear, then, as stated in the opinion of the court below, that the averments in the petition, looking to a privity between the parties, are not supported by the facts

found. Those facts are, in brief, that the convention suggested a certain type of box, describing its dimensions and main features, and that in accordance with this suggestion, which seems to have originated with the convention, the Postmaster-General *devised* the box. To whatever extent the making of this box may have involved the exercise of the inventive faculty, a point not considered by the court below, these findings show that it must have been exercised either by the convention who suggested the general type and dimensions of the box, or by the Postmaster-General, who "devised" it, or perhaps by both, but certainly not by Strong, who merely modeled and manufactured the box in accordance with what had been devised by the Postmaster-General. These findings show that the conception was practically complete before Strong undertook to embody it in the boxes which were actually made. He simply supplied the mechanical skill to carry into effect the conceptions of another.

It is well settled that an inventor has the right to employ the mechanical skill of another to carry out into execution the former's original ideas.

> To constitute an inventor it is not necessary to have the manual skill and dexterity to make the drafts. If the ideas are furnished by him for producing the result aimed at, he is entitled to avail himself of the mechanical skill of others to carry out practically his contrivance. (*Sparkman* v. *Higgins*, 1 Blatch., 205.)

Thus, where one man suggested the plan of an engine, illustrating his ideas by a diagram drawn upon the sand on the floor, and directed another man to prepare the

drawings, the former was held to be the inventor (*Blandy* v. *Griffith*, 3 Fisher, 609); and even in the case of a design patent it is not necessary that he who conceives the idea and the manner of carrying it out should also do the drawing in order to entitle him to a patent (*Smith* v. *Stewart*, 55 Fed. Rep., 481).

As was said in an English case—

> If Sutton suggested the principle to Mr. Minter, then he would be the inventor. If, on the other hand, Mr. Minter suggested the principle to Sutton, and Sutton was assisting him, then Mr. Minter would be the first and true inventor and Sutton would be a machine, so to speak, which Mr. Minter used for the purpose of enabling him to carry his original conception into effect. (*Per* Alderson, B., in *Minter* v. *Wells*, Webster, 127, 132.)

If, then, as the findings show, Strong merely did the mechanical work that was necessary for the manufacture of boxes of the type designed by the convention or the Postmaster-General, he was not the inventor of that type of box, and the allegation in the amended petition that "it was the intention and understanding of the Postmaster-General * * * that the invention so selected and adopted should be used by the Government of the United States, and a reasonable and just compensation made for the use of the same," rests on an absolutely unwarrantable assumption. That the Postmaster-General had any such "intention and understanding" there is no evidence whatever, and it can not possibly be presumed.

Such "intention and understanding" could not have existed unless the Postmaster-General had been wholly

ignorant of the respective legal rights of the United States and Strong in this matter, and it is knowledge, not ignorance, of the law that is to be presumed. As far as the findings show, the first information the Post-Office Department had that Strong even claimed to be the inventor of the "round-top" letter box was in 1874, during the term of a later Postmaster-General, who at once denied the justice of the claim. It is to be presumed that his predecessor, who "devised" the box, was equally cognizant of the legal position of the United States in the matter.

The allegations of the petition being disproved, it remains to consider precisely in what relation the parties to this suit stand to each other, in consequence of what took place. That their relation is not contractual is clear. The box was used either "under claim of ownership by the Department," as the opinion of the court below states, or at all events with the understanding that Strong was not the inventor, and in either case no contract can be implied from such a use. There can, therefore, be no recovery. (*Schillinger* v. *United States*, 155 U. S., 163; *Belknap* v. *Schild*, 161 *id.*, 10.)

In the appellant's brief (p. 6) it is erroneously stated that the position of the court below—

> * * * appears to be grounded upon one or both of two propositions: *First*, that the use of the inventions of Strong was without his consent; *second*, that it was claimed he was not the inventor of the property used, and therefore could not maintain an action. * * * The alternative of these propositions must be determined. They can not exist together.

The error in this statement lies in the word "inventions." The court below has found that the Postmaster-General "devised" the box, pursuant to the recommendations of the board, a finding which by necessary inference denies that Strong invented the box. The proposition upon which the court below rests its judgment is therefore a single one, viz, that Strong was not the inventor. There is no alternative to be considered.

In view of the facts found, the statement, in the opinion of the court below, that the box was "used under claim of ownership by the Department" must be understood to mean that these facts were known to the Department, and not merely that it had a claim, which might or might not be valid, to the ownership of all patentable rights in the box.

In point of fact, it is immaterial whether the Post-Office Department did or did not claim to be the owner of the invention for which a patent was issued to Strong. What it claimed, and what the court below has found, was that a state of facts existed which precluded the possibility of Strong having been the inventor, and that the Government had a right to use such box without compensating him.

The appellant's brief states (p. 7) that there is nothing in the description, as it appears in the report of the convention, of the letter box recommended by the convention "which is not in one or both of the patents to Strong," viz, patent No. 88528, March 30, 1869 (Rec., 11), and patent No. 94449, August 31, 1869 (Rec., 13). As however, patent No. 88,258 is for "the flange lid F with

its inclined plate F^1 in combination with the aperture C, and surrounding flange D, all constructed to operate substantially as within described," which "aperture C" is in a box lid which is merely slightly inclined, but in no sense curved, and as the mail matter was taken from this box by raising the lid, the box having no "door in the side or front with side flanges," it is clear that the convention's recommendation necessarily called for a different kind of box from that made under this patent. Patent No. 94449 has the curved top and a door in the side, though apparently without flanges, but the opening at the top is certainly not "specially protected from the weather," so that it is also clear that the convention's recommendation called for a different type of box from that shown in this second patent, the only claim in which, it is to be observed, is for a matter which is wholly outside of that recommendation.

That claim is as follows:

> The shaft C, with the blades E and F, cover G, and handle D, all attached to said shaft, in combination with the aperture H, and weight or weights to turn the said blades and cover back to their places automatically, as described, all being constructed, arranged, and operating substantially as set forth.

Moreover, even if it were true that the type of box recommended by the convention did not differ from that shown in these two patents, the findings forbid the suggestion that the letter box, as finally "devised and adopted" by the Postmaster-General, was of a type described in either of those patents, because it was the very same device for which Strong applied for a patent

on March 9, 1874, and for which a patent was issued to him on October 27, 1891. (See Findings VII and XI, Rec., 31, 33.) Had this type of box been shown in either of those patents in 1869, the court below could not have found that it was "devised" by the Postmaster-General. It may be added that as the appellant has no interest in patents Nos. 88258 and 94449, it is immaterial, for the purposes of the present suit, whether they did or did not cover the type of box suggested by the convention and devised by the Postmaster-General.

The appellant's brief (p. 9) further states that the contract of February 18, 1870 (Rec., 8–11), "recognizes that Strong had invented certain improvements in street letter boxes which had been and were being used by the United States." It is submitted that this assertion is wholly without foundation, the contract merely stating that Strong had deposited a large and a small box in the Post-Office Department at Washington, but being wholly silent as to who invented these boxes, unless, indeed, the reference to the Postmaster-General's right to suggest "alterations and improvements" be a recognition of that officer as the inventor of the boxes, it being a fair inference that his right to have his improvements carried out grew out of his right as inventor. Certainly there is no recognition whatever of anyone else as the inventor.

Even if the court below had found that Strong had invented the device for which patent No. 462224 was ultimately issued to him, the petition would have had to be dismissed, because Finding VII states that the type of letter box for which Strong applied for a patent March

9, 1874 (an application amended March 18, 1890, and ultimately granted as patent No. 462224), was "in public use in the letter-carrier cities of the United States for more than two years prior to the 9th day of March, 1874."

Moreover, even if the court had found facts to warrant the conclusion that patent No. 462224 had been properly granted to Strong, the measure of damages would have been the value of the use of the invention so patented, after October 27, 1891, the date of the patent. (*Brodie* v. *Ophir Silver Mining Co.*, 4 Fisher, 137, S. C., 5 Sawyer, 608.) There being no evidence of the extent of this use by the United States, nor even that any of the boxes covered by that patent were made or used by the United States after that date, there could have been no judgment in the appellant's favor.

It is therefore submitted that the judgment of the court below should be affirmed.

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